

9-18-2014

# Countrywide Home Loans, Inc. v. Sheets Clerk's Record v. 1 Dckt. 42063

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Volume 1  
Pg 1-179

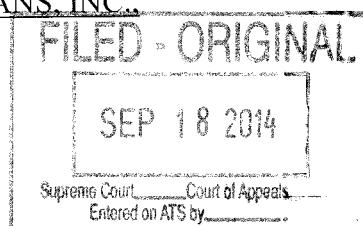
IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

---

COUNTRYWIDE HOME LOANS, INC.

Plaintiff  
Respondent

VS



RALPH E. SHEETS, JR. AND DEBRA SHEETS; and DOES 1-10

Defendant  
Appellant

---

Appealed from the District Court of the  
Third Judicial District of the State of  
Idaho, in and for Adams County

Hon. BRADLY S. FORD, District Judge

---

JOHN CURTIS HUCKS  
Attorney for Defendants/Appellants

DERRICK J.O'NEILL  
Attorney for Plaintiff/Respondent

---

65

SUPREME COURT NO.

42063-2014

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff/Respondent,

vs

RALPH E. SHEETS, JR. and DEBRA  
SHEETS; and DOES 1-10 as individuals  
with an interest in the property described  
as:

Township 22 North, Range 1 East, Boise  
Meridian, Adams County, Idaho  
Section 16: A parcel of land in the  
NE1/4NE1/4 lying Westerly of the  
Westerly line of the right-of-way of U.S.  
Highway 95 as it existed in 1977  
EXCEPTING THEREFROM the  
following parcel:

Commencing at a point on the south line of  
the NE1/4NE1/4 as intersected by the West  
line of U.S. Highway 95(as established in  
1953), the REAL POINT OF  
BEGINNING;

Thence Northeasterly along the West line  
of said Highway 550 feet;

Thence West and parallel to the South line  
of the NE1/4NE1/4 550 feet;

Thence Southeasterly and parallel to the  
West line of said Highway 550 feet to the  
South line of the NE1/4NE1/4;

Thence along said South line 550 feet to  
the REAL POINT OF BEGINNING.

Which may commonly be known as: 5603  
Highway 95, New Meadows, Idaho, 83654,  
Defendants/Appellants.

Ralph E. Sheets, Jr. and Debra Sheets,  
Counterclaimants,

Vs.

Countrywide Home Loans, Inc.,  
Counterdefendant,

And

Ralph E. Sheets, Jr. and Debra Sheets,

SUPREME COURT #42063-2014

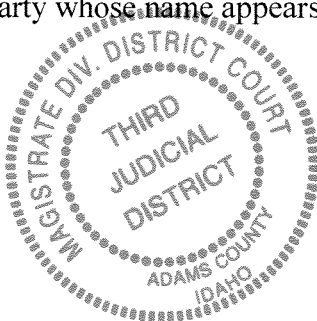
NOTICE OF SERVICE  
OF CLERK'S RECORD

Third Party Plaintiffs,  
Vs.  
Bank of America, N.A. successor by  
merger and name change to BAC HOME  
LOANS, INC., f/k/a COUNTRYWIDE  
HOME LOANS, INC., and BAC HOME  
LOAN SERVICING, L.P., f/k/a  
COUNTRYWIDE HOME LOAN  
SERVICING, LP, and RECONTRUST  
COMPANY, N.A.  
Third Party Defendants


Notice is hereby given that on July 21, 2014, the Clerk's Record and Reporter's Transcript in the above-referenced appeal was lodged with the District Court Clerk.

The parties shall have twenty-eight (28) days from the date of service of the appeal record to file any objections, together with a Notice of Hearing, with the District Court. If no objection is filed, the record will be deemed settled and will be filed with the Supreme Court.

If there are multiple (Appellants)(Respondents), I will serve the record, and any transcript, upon the parties upon receipt of a stipulation of the parties, or court order stating which party shall be served. If no stipulation or order is filed in seven (7) days, I will serve the party whose name appears first in the case title.



Sherry Ward  
Clerk of the District Court

by   
Deputy Clerk

cc: Clerk of the Court  
Idaho Supreme Court  
PO Box 83720  
Boise, ID 83720-0101



Certified  
COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

COUNTRYWIDE HOME LOANS, INC.,  
Plaintiff/Respondent,

vs

RALPH E. SHEETS, JR. and DEBRA  
SHEETS; and DOES 1-10 as individuals  
with an interest in the property described as:

Township 22 North, Range 1 East, Boise  
Meridian, Adams County, Idaho

Section 16: A parcel of land in the  
NE1/4NE1/4 lying Westerly of the Westerly  
line of the right-of-way of U.S. Highway 95  
as it existed in 1977 EXCEPTING  
THEREFROM the following parcel:

Commencing at a point on the south line of  
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Thence Northeasterly along the West line of  
said Highway 550 feet;

Thence West and parallel to the South line of  
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Thence Southeasterly and parallel to the West  
line of said Highway 550 feet to the South  
line of the NE1/4NE1/4;

Thence along said South line 550 feet to the  
REAL POINT OF BEGINNING.

Which may commonly be known as: 5603  
Highway 95, New Meadows, Idaho, 83654,  
Defendants/Appellants.

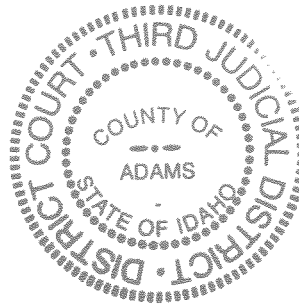
Ralph E. Sheets, Jr. and Debra Sheets,  
Counterclaimants,

Vs.

Countrywide Home Loans, Inc.,  
Counterdefendant,

And

SUPREME COURT # 42063-2014



State of Idaho

County of Adams

vs

I, the undersigned Recorder and Clerk of the District  
Court of Adams County, State of Idaho, do hereby certify  
that the foregoing Instrument is a true and correct copy of  
the original onfile in my office and in my custody.

IN WITNESS WHEREOF, I have set my hand and affixed  
my official seal on this 18<sup>th</sup> day of June  
2014

**SHERRY WAHD**

Clerk of the District Court  
and County Recorder

Deputy

Ralph E. Sheets, Jr. and Debra Sheets,  
Third Party Plaintiffs,

Vs.

Bank of America, N.A. successor by merger  
and name change to BAC HOME LOANS,  
INC., f/k/a COUNTRYWIDE HOME  
LOANS, INC., and BAC HOME LOAN  
SERVICING, L.P., f/k/a COUNTRYWIDE  
HOME LOAN SERVICING, LP, and  
RECONTRUST COMPANY, N.A.

Third Party Defendants

**CLERKS RECORD ON APPEAL**

Appeal from the District Court of the Third Judicial District

of the State of Idaho, in and for the County of Adams.

**HONORABLE BRADLY S FORD  
DISTRICT JUDGE**

JOHN CURTIS HUCKS

Attorney at Law, P.C.

PO Box 737

New Meadows, ID. 83654

ISB#6473

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DERRICK J. O'NEILL

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Boise, ID 83702

ISB#4021

ATTORNEY FOR RESPONDENT

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Derrick J. O'Neill/ISB #4021  
O'NEILL LAW, PLLC  
300 Main Street, Suite 150  
Boise, Idaho 83702  
Telephone: 208-489-3035  
Facsimile: 208-854-3998  
[derrick@oneillpllc.com](mailto:derrick@oneillpllc.com)

FILED

MAR 30 2010 1:00pm

SHERRY WARD, CLERK

*Sherry Ward*

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA  
SHEETS; and DOES 1-10 as individuals  
with an interest in the property legally  
described as:

Township 22 North, Range 1 East, Boise  
Meridian, Adams County, Idaho  
Section 16: A parcel of land in the  
NE1/4NE1/4 lying Westerly of the Westerly  
line of the right-of-way of U.S. Highway 95,  
as it existed in 1977

EXCEPTING THEREFROM the following  
parcel:

Commencing at a point on the south line of  
the NE1/4NE1/4 as intersected by the West  
line of U.S. Highway 95 (as established in  
1953), the REAL POINT OF BEGINNING;  
Thence Northeasterly along the West line of  
said Highway 550 feet;  
Thence West and parallel to the South line of  
the NE1/4NE1/4 550 feet;  
Thence Southeasterly and parallel to the  
West line of said Highway 550 feet to the  
South line of the NE1/4NE1/4;  
Thence along said South line 550 feet to the

Case No. CV-2010-2564

COMPLAINT

Bradley S.  
Ford

Fee Category: A  
Fee: \$88.00

REAL POINT OF BEGINNING.

Which may commonly be known as: 5603  
Highway 95, New Meadows, Idaho, 83654,

Defendants.

COMES NOW the Plaintiff, by and through its attorneys of record, O'Neill Law, PLLC,  
and for a cause of action against Defendants hereby complains and alleges as follows:

### **FACTS AND PARTIES**

1. At all times relevant hereto, Plaintiff is the beneficiary under a deed of trust executed by Ralph E. Sheets, Jr. (hereinafter "Sheets") on or about December 21, 2004 and recorded in the mortgage records of Adams County, Idaho, as Instrument No. 107860 on December 28, 2004.
2. At all times relevant hereto, Ralph E. Sheets, Jr. and Debra Sheets, husband and wife, were individuals owning real property and/or residing in Adams County, Idaho and Ralph E. Sheets, Jr. was the Grantor under a deed of trust in favor of Plaintiff for the real property described as follows (hereafter "Property"):

Township 22 North, Range 1 East, Boise Meridian, Adams County, Idaho  
Section 16: A parcel of land in the NE1/4NE1/4 lying Westerly of the  
Westerly line of the right-of-way of U.S. Highway 95, as it existed in 1977  
EXCEPTING THEREFROM the following parcel:

Commencing at a point on the south line of the NE1/4NE1/4 as intersected  
by the West line of U.S. Highway 95 (as established in 1953), the REAL  
POINT OF BEGINNING;

Thence Northeasterly along the West line of said Highway 550 feet;

Thence West and parallel to the South line of the NE1/4NE1/4 550 feet;

Thence Southeasterly and parallel to the West line of said Highway 550 feet  
to the South line of the NE1/4NE1/4;

Thence along said South line 550 feet to the REAL POINT OF  
BEGINNING.

Which may commonly be known as: 5603 Highway 95, New Meadows,  
Idaho, 83654.

3. Does 1-10 are individuals who may have an interest in the Property commonly described as: 5603 Highway 95, New Meadows, Idaho, 83654.

4. The amount in controversy exceeds jurisdiction requirements of this Court.

#### **RESCISSION OF RECONVEYANCE**

5. Plaintiff realleges and incorporates herein the preceding paragraphs.

6. On or about December 21, 2004, Ralph E. Sheets, Jr. executed a promissory note in the original principal amount of \$62,250.00 secured by a deed of trust recorded against the aforementioned real property. Said deed of trust was recorded on December 28, 2004 as Instrument No. 107860. A true and correct copy of the deed of trust is attached hereto as **Exhibit A**.

7. On November 9<sup>th</sup>, 2009, through a mistake, inadvertence or error, the trustee, under the deed of trust, caused to be recorded a reconveyance of the December 21, 2004 deed of trust in favor of Plaintiff's predecessor in interest and attached hereto as **Exhibit A**. A deed of reconveyance was recorded as Instrument No. 119343, mortgage records of Adams County, Idaho. Under the terms of the note and deed of trust, Sheets was only entitled to a deed of reconveyance upon full satisfaction of sums due and owing under the promissory note. The note has not been satisfied. A true and correct copy of the deed of reconveyance is attached hereto as **Exhibit B**.

8. As evidenced by the deed of trust and promissory note, it was the intention of Sheets to secure full payment of the promissory note through the deed of trust. The deed of reconveyance is a mistake and does not reflect the intentions of the parties.

9. The deed of reconveyance should be declared null and void and the original deed of trust restored in the same force and effect as on the date originally executed and intended by Plaintiff and Sheets.

10. The rights, status and legal relations of all parties, and other entities having interest in the property, shall be bound by the judgment for reformation entered herein.

11. In the event any party contests this matter, Plaintiff requests that the Court award Plaintiff its attorney fees incurred herein in the amount of \$3,000.00, or in an amount to be proven at trial, whichever is greater, pursuant to Idaho Code §§ 12-120, 12-121 and 12-123.

WHEREFORE, Plaintiff prays for judgment, decree and order from the court as follows:

a. For rescission of the deed of reconveyance recorded in the mortgage records of Adams County, Idaho as Instrument No. 119343, and further declaring that the said deed of reconveyance is void and shall have no effect.

b. That the deed of trust executed in favor of Plaintiff's predecessor in interest recorded on December 28, 2004 as Instrument No. 107860, mortgage records of Adams County, Idaho, together with all assignments thereunder shall be reinstated in full force and effect as and from the date originally executed.

c. In the event any Defendants contest this action, Plaintiff respectfully requests an award of attorney fees in the amount of \$3,000.00 or an amount to be proven at trial, whichever is greater, pursuant to Idaho Code § 12-120, 12-121, and 12-123.

d. For such other and further relief as the Court deems just and equitable in the premises.

DATED This 29 day of March, 2010.

O'NEILL LAW, PLLC

By: 

Derrick J. O'Neill, Of the Firm  
Attorneys for Plaintiff

**VERIFICATION**

STATE OF ARIZONA

: ss.

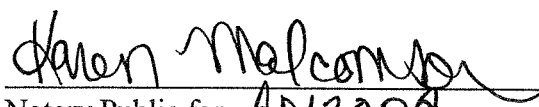
County of MARICOPA

Icela Lopez, being first duly sworn, deposes and says:

That she is the Vice President of COUNTRYWIDE HOME LOANS, INC., Plaintiff herein; that she has read the foregoing instrument, knows the contents thereof to be true and correct to the best of her knowledge.



SUBSCRIBED AND SWORN to before me this 25 day of March, 2010.

  
Notary Public for ARIZONA  
Residing at Maricopa Arizona  
My Commission Expires April 8, 2011



## NOTE

DECEMBER 21, 2004  
[Date]COUNCIL  
[City]IDAHO  
[State]5603 HIGHWAY 95, NEW MEADOWS, ID 83654  
[Property Address]**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 65,250.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is AMERICA'S WHOLESALE LENDER

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.375 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

**3. PAYMENTS****(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the FIRST day of each month beginning on

FEBRUARY 01, 2005. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JANUARY 01, 2020, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

P.O. Box 10219, Van Nuys, CA 91410-0219  
or at a different place if required by the Note Holder.

**(B) Amount of Monthly Payments**

My monthly payment will be in the amount of U.S. \$ 563.92

**4. BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

**5. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

**6. BORROWER'S FAILURE TO PAY AS REQUIRED****(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of FIFTEEN calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

MULTISTATE FIXED RATE NOTE-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

VMP MORTGAGE FORMS - (800)521-7291

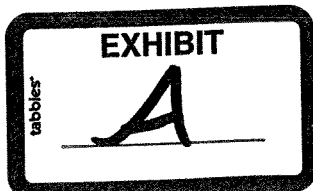
VMP -5N (0207).01

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Page 1 of 2

Initials: *R&L*

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**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

**(D) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

**7. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

**8. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

**9. WAIVERS**

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

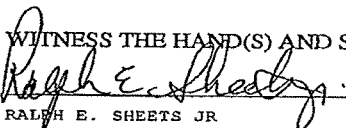
**10. UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

 (Seal) \_\_\_\_\_ (Seal)  
RALPH E. SHEETS JR. -Borrower -Borrower

\_\_\_\_\_(Seal) \_\_\_\_\_ (Seal)  
-Borrower -Borrower

[Sign Original Only]



INSTRUMENT NO. **107860**

After Recording Return To:  
COUNTRYWIDE HOME LOANS, INC.  
MS SV-79 DOCUMENT PROCESSING  
P.O. Box 10423  
Van Nuys, CA 91410-0423

Prepared By:  
KIMBERLY MONTEZ

Instrument # **107860**

COUNCIL, ADAMS, IDAHO  
2004-12-28 03:43:06 No. of Pages: 17  
Recorded for: TIMBERLINE TITLE & ESCROW  
MICHAEL FISK Fee: 51.00  
Ex-Officio Recorder Deputy  
Index to: DEED OF TRUST

[Space Above This Line For Recording Data]

SHEETS  
[Escrow/Closing #]

0008545953212004  
[Doc ID #]

## DEED OF TRUST

MIN 1000157-0004643292-4



### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated DECEMBER 21, 2004, together with all Riders to this document.

(B) "Borrower" is

RALPH E SHEETS JR, A MARRIED MAN

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

AMERICA'S WHOLESALE LENDER

Lender is a CORPORATION

organized and existing under the laws of NEW YORK

Lender's address is

P.O. Box 10219, Van Nuys, CA 91410-0219

(D) "Trustee" is

TIMBERLINE TITLE & ESCROW

204 ILLINOIS AVENUE,, COUNCIL, ID 83612

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated DECEMBER 21, 2004. The Note states that Borrower owes Lender

SIXTY FIVE THOUSAND TWO HUNDRED FIFTY and 00/100

IDAHO-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

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VMP-6A(ID) (0005)  
CONV/VA

CHL (08/00)(d)

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Initials:

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Dollars (U.S. \$ 65,250.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JANUARY 01, 2020 .

(G) **"Property"** means the property that is described below under the heading "Transfer of Rights in the Property."

(H) **"Loan"** means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) **"Riders"** means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

<input type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input checked="" type="checkbox"/> Other(s) [specify]

0

(J) **"Applicable Law"** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) **"Community Association Dues, Fees, and Assessments"** means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) **"Electronic Funds Transfer"** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) **"Escrow Items"** means those items that are described in Section 3.

(N) **"Miscellaneous Proceeds"** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) **"Mortgage Insurance"** means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) **"Periodic Payment"** means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) **"RESPA"** means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) **"Successor in Interest of Borrower"** means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY  
[Type of Recording Jurisdiction]

of

ADAMS  
[Name of Recording Jurisdiction]

:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: RP22N01E160150A

which currently has the address of

5603 HIGHWAY 95, NEW MEADOWS

[Street/City]

Idaho 83654 ("Property Address"):

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclosure and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check, or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

Initials: 

Form 3013 1/01

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain

Initials:

priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

**11. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

Initials: 



All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.



**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous

Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public-auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

**23. Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

**24. Substitute Trustee.** Lender may, for any reason or cause, from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

**25. Area and Location of Property.** Either the Property is not more than 40 acres in area or the Property is located within an incorporated city or village.

[illegible]

Ralph E. Sheets Jr. (Seal)  
RALPH E. SHEETS JR. -Borrower

DEBRA SHEETS (Seal)  
-Borrower

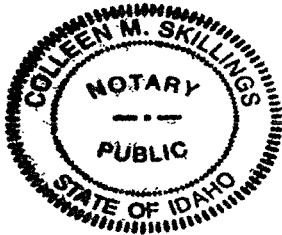
DEBRA SHEETS shall have no personal liability to the obligation herein or secured thereby, and executes this instrument only to (Seal) subordinate any interest she may <sup>Borrower</sup> acquire, including without reservation her homestead rights, to this mortgage.

\_\_\_\_ (Seal)  
-Borrower

County ss: Adams

On this 21<sup>st</sup> day of December 2004, before me,  
Colleen M. Skillings, a Notary Public in and for said county and state,  
 personally appeared Ralph G. Sheets Jr and Debra Sheets

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public residing at: Indian Valley  
7/1/2010

Initials

26

EXHIBIT 'A'

Township 22 North, Range 1 East, Boise Meridian, Adams County, Idaho

Section 16: A parcel of land in the NE1/4NE1/4 lying Westerly of the Westerly line of the right-of-way of U.S. Highway 95, as it existed in 1977

EXCEPTING THEREFROM the following parcel:

Commencing at a point on the south line of the NE1/4NE1/4 as intersected by the West line of U.S. Highway 95 (as established in 1953), the REAL POINT OF BEGINNING;

Thence Northeasterly along the West line of said Highway 550 feet;

Thence West and parallel to the South line of the NE1/4NE1/4 550 feet;

Thence Southeasterly and parallel to the West line of said Highway 550 feet to the South line of the NE1/4NE1/4;

Thence along said South line 550 feet to the REAL POINT OF BEGINNING.

## AFFIXATION AFFIDAVIT MANUFACTURED HOME

Return To:  
COUNTRYWIDE HOME LOANS, INC.  
MS SV-79 DOCUMENT PROCESSING  
P.O.Box 10423  
Van Nuys, CA 91410-0423

Prepared By:  
KIMBERLY MONTEZ

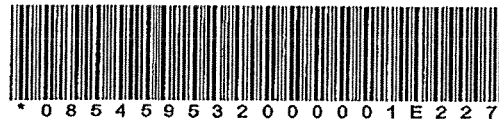
SHEETS  
[Escrow/Closing #]

0008545953212004  
[Doc ID #]

THE STATE OF *Idaho*  
COUNTY OF *Adams*

• Affixation Affidavit Manufactured Home  
1E227-US (05/04)(d)

Page 1 of 5



*28*

*Rel*  
*EW*

1) The manufactured home located on the following described property located  
5603 HIGHWAY 95, NEW MEADOWS, ID 83654  
in ADAMS County, ("Property Address") is  
permanently affixed to a foundation, is made a part of the land and will assume the characteristics  
of site-built housing.

- |                           |                     |                                   |
|---------------------------|---------------------|-----------------------------------|
| HILM                      |                     | TL                                |
| New/Used                  | Manufacturer's Name | Manufacturer's Name and Model No. |
| 02960378BM                |                     | Attach Legal Description          |
| Manufacturer's Serial No. | Length/Width        |                                   |

- Affixation Affidavit Manufactured Home  
1E227-US (05/04)

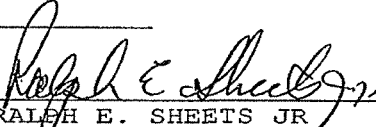
DOC ID #: 0008545953212004

- 12) The manufactured home will be assessed and taxed by the applicable taxing jurisdiction as real estate.
- 13) The borrower is the owner of the land and any conveyance or financing of the manufactured home and the land shall be a single real estate transaction under applicable state law.

Borrower(s) certifies that Borrower(s) is in receipt of manufacturer's recommended maintenance program regarding the carpet and manufacturer's warranties covering the heating/cooling systems, hot water heater, range, etc.; and the formaldehyde health notice. This affidavit is being executed pursuant to applicable state law.

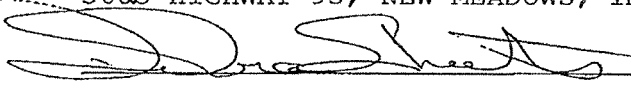
\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

  
RALPH E. SHEETS JR

5608 HIGHWAY 95, NEW MEADOWS, ID 83654

(Borrower)  
(Date)

  
(Borrower)  
(Date)

\_\_\_\_\_  
(Borrower)  
(Date)

\_\_\_\_\_  
(Borrower)  
(Date)

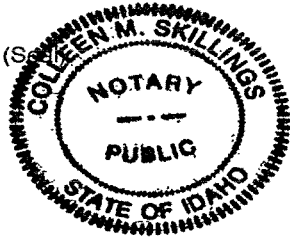
[Acknowledgment on Following Pages]

**BORROWER ACKNOWLEDGMENT**

State of Idaho

County of Adams

This instrument was acknowledged before me on December 21, 2004  
by Ralph E. Sheets Jr and Debra Sheets



Colleen M. Skillings  
Signature of Notarial Officer

Notary Escrow Assistant  
Title of Notarial Officer

My commission expires: 7/1/2010



**LENDER ACKNOWLEDGMENT**

**Lender's Statement of Intent:**

The undersigned Lender intends that the manufactured home be an immovable fixture and a permanent improvement to the land.

LENDER:

By: [Signature]

Its: SVP

State of Colorado

County of Adams

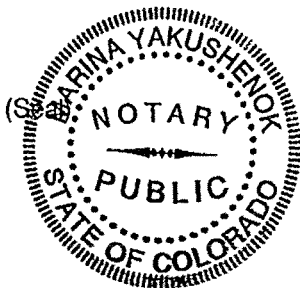
This instrument was acknowledged before me on 22 day of December 2004 [date],  
by Scott Hansen [name of agent],

[title of agent] of

[name of entity acknowledging],

a

[state and type of entity], on behalf of  
[name of entity acknowledging].



[Signature]  
Signature of Notarial Officer

Senior Lender  
Title of Notarial Officer

My commission expires:

**MY COMMISSION EXPIRES 7/11/2006**

Recording Requested By:  
ReconTrust Company, N.A.  
2575 W. Chandler Blvd.  
Mail Stop: AZ1-804-02-11  
Chandler, AZ 85224  
(800) 540-2684

Instrument # 119343  
COUNCIL, ADAMS, IDAHO  
11-9-2009 03:32:31 No. of Pages: 1  
Recorded for: RECONTRUST COMPANY  
SHERRY WARD Fee: 3.00  
Ex-Officio Recorder Deputy *Sarah J. [Signature]*  
Index to: DEED OF RECONVEYANCE

When recorded return to:  
RALPH E SHEETS, JR  
PO Box 202  
Pollock, ID 83547

Above Space for Recorder's Use

UID: 5f4787fb-7468-4502-a35b-30e0781c9046  
DOCID: 000854595322005N



### FULL RECONVEYANCE

ReconTrust Company, N.A., as Trustee under Deed of Trust Dated 12/21/2004 And made by:  
RALPH E SHEETS, JR  
as Trustor, recorded as Instrument or Document No. 107860, on 12/28/2004 in Book N/A, Page N/A  
of Official Records in the office of the Recorder of ADAMS County, Idaho having received from holder  
of the obligations thereunder a written request to reconvey reciting that all sums secured by said Deed  
of Trust have been fully paid, and said Deed of Trust and the note or notes secured thereby having  
been surrendered to said Trustee for cancellation, does hereby RECONVEY, without warranty to the  
person or persons, legally entitled thereto, the estate now held by it thereunder.  
In Witness Whereof, ReconTrust Company, N.A., as Trustee.

Dated: 11-4-05

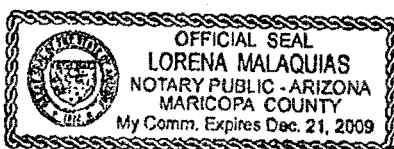
ReconTrust Company, N.A.

By: *Jewel Elsmere*  
Jewel Elsmere  
Assistant Secretary

### All Purpose Acknowledgment

STATE OF ARIZONA  
COUNTY OF MARICOPA

On 11/4/05, before me, Lorena Malaquias, Notary Public, personally appeared Jewel  
Elsmere, personally known to me (or proved to me on the basis of satisfactory evidence) to be the  
person whose name is subscribed to the within instrument and acknowledged to me that he/she  
executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the  
person or the entity upon behalf of which the person acted, executed the instrument. Witness my hand  
and official seal.



*Lorena Malaquias*  
Before me: Lorena Malaquias  
Notary Public for said State and County  
Notary Expiration: 12/21/2009



JOHN CURTIS HUCKS  
ATTORNEY AT LAW, P.C.  
P.O. Box 737  
New Meadows, ID 83654  
Tel: (208) 347-4128; Facsimile: (208) 347-4128  
huckslaw@yahoo.com  
ISB No. 6473  
Attorney for Defendants

FILED  
JUN 21 2010 2:00 PM  
SHERRY WARD, CLERK  
*John Hucks*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA SHEETS;  
and DOES 1-10 as individuals with an interest in  
the property legally described as:

Township 22 North, Range 1 East, Boise  
Meridian, Adams County, Idaho  
Section 16: A parcel of land in the NE1/4NE1/4  
lying Westerly of the Westerly line of the right-  
of-way of U.S. Highway 95, as it existed in 1977  
EXCEPTING THEREFROM the following  
parcel:

Commencing at a point on the south line of the  
NE1/4NE1/4 as intersected by the West line of  
U.S. Highway 95 (as established in 1953), the  
REAL POINT OF BEGINNING;  
Thence Northeasterly along the West line of said  
Highway 550 feet;  
Thence West and parallel to the South line of the  
NE1/4NE1/4 550 feet;  
Thence Southeasterly and parallel to the West  
line of said Highway 550 feet to the South line of  
the NE1/4NE1/4;  
Thence along said South line 550 feet to the  
REAL POINT OF BEGINNING.

Which may commonly be known as: 5603  
Highway 95, New Meadows, Idaho, 83654,

Defendants.

Case No. CV-2010-2564

**ANSWER TO COMPLAINT AND  
DEMAND FOR JURY TRIAL  
PURSUANT TO I.R.C.P. 38**

COMES NOW Defendants, Ralph E. Sheets, Jr. and Debra Sheets (hereinafter "Defendants") by and through its attorney of record John Curtis Hucks, Attorney at Law, P.C., and for their Answer and Affirmative Defenses state and allege as follows.

**ANSWER**

1. In response to each particular allegation of the plaintiff's Complaint, Defendants Sheets admit and deny as follows. To the extent that any particular allegation of the Plaintiff's Complaint is neither specifically admitted nor specifically denied, said allegation shall be denied.

2. In response to paragraph 1 of the Plaintiff's Complaint, Defendants admit entering into the deed of trust described therein, but are without knowledge as to whether Plaintiff is the current beneficiary under said instrument.

3. Defendants admit the allegations contained in paragraph 2 of the Plaintiff's Complaint.

4. Defendants admit the allegations contained in Paragraph 3 of the Plaintiff's Complaint.

5. Defendants admit the allegations contained in paragraph 4 of the Plaintiff's Complaint.

6. In response to paragraph 5 of the Plaintiff's Complaint, Defendants restate and incorporate their responses to paragraphs 1 thru 4, as stated above.

7. Defendants admit the allegations contained in paragraph 6 of the Plaintiff's Complaint.

8. Defendants are without sufficient knowledge as to the allegations of paragraph 7 of the Plaintiff's Complaint, and as such, all allegations contained therein are denied.

9. For the reasons set forth in Defendants' Affirmative Defenses set forth below, all of the allegations set forth in paragraph 8 of Plaintiff's Complaint are denied.

10. For the reasons set forth in Defendants' Affirmative Defenses set forth below, all of the allegations set forth in paragraph 9 of Plaintiff's Complaint are denied.

11. For the reasons set forth in Defendants' Affirmative Defenses set forth below, all of the allegations set forth in paragraph 10 of Plaintiff's Complaint are denied.

12. For the reasons set forth in Defendants' Affirmative Defenses set forth below, all of the allegations set forth in paragraph 11 of Plaintiff's Complaint are denied.

#### **Affirmative Defenses**

13. Plaintiff's Complaint and each claim and/or cause of action contained therein **fails to state a claim upon which relief can be granted** and the Complaint should, therefore, be dismissed with prejudice.

14. Plaintiff, through its agents and employees have engaged in conduct in **violation of the Idaho Consumer Protection Act, Title 48, Chapter 6, Idaho Code**, resulting in financial damages to Defendants equal to or in excess of the amounts claimed by Plaintiff pursuant to the deed of trust and underlying promissory note, and as a result, Plaintiff's Complaint should be dismissed with prejudice.

15. Plaintiff, through its agents and employees have engaged in conduct in **violation of the federal Truth in Lending Act, 15 U.S.C. §1601, et seq.**, resulting in financial damages to Defendants equal to or in excess of the amounts claimed by Plaintiff pursuant to the deed of trust and underlying promissory note, and as a result, Plaintiff's Complaint should be dismissed with prejudice.

16. Plaintiff, through its agents and employees have engaged in conduct in **violation of the federal Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq.**, resulting in financial damages to Defendants equal to or in excess of the amounts claimed by Plaintiff pursuant to the deed of trust and underlying promissory note, and as a result, Plaintiff's Complaint should be dismissed with prejudice.

17. Plaintiff, through its agents and employees have engaged in conduct in **violation of the federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq.**, resulting in financial damages to Defendants equal to or in excess of the amounts claimed by Plaintiff pursuant to the deed of trust and underlying promissory note, and as a result, Plaintiff's Complaint should be dismissed with prejudice.

18. Plaintiff, through its agents and employees have engaged in conduct which constitutes **slander of credit**, resulting in financial damages to Defendants equal to or in excess of the amounts claimed by Plaintiff pursuant to the deed of trust and underlying promissory note, and as a result, Plaintiff's Complaint should be dismissed with prejudice.

19. Plaintiff, through its agents and employees have engaged in conduct which **fraudulently induced Defendants to pursue refinancing of their personal residence**, resulting in financial damages to Defendants equal to or in excess of the amounts claimed by Plaintiff pursuant to the deed of trust and underlying promissory note, and as a result, Plaintiff's Complaint should be dismissed with prejudice.

20. Plaintiff, through its agents and employees has **engaged in negligent and commercially unreasonable conduct** in connection with the attempted refinancing of Defendants' personal residence, resulting in financial damages to Defendants equal to or in

excess of the amounts claimed by Plaintiff pursuant to the deed of trust and underlying promissory note, and as a result, Plaintiff's Complaint should be dismissed with prejudice.

21. Plaintiff, through its agents and employees has engaged in negligent and commercially unreasonable conduct, which conduct constitutes **unclean hands**, resulting in financial damages to Defendants equal to or in excess of the amounts claimed by Plaintiff pursuant to the deed of trust and underlying promissory note, and as a result, Plaintiff has either **waived** or is **equitably estopped** from seeking the relief demanded in its Complaint.

22. Plaintiff, through its agents and employees has engaged in negligent and commercially unreasonable conduct, resulting in a **right of set-off** in favor of Defendants equal to or in excess of the amounts claimed by Plaintiff pursuant to the deed of trust and underlying promissory note, and as a result, Plaintiff's Complaint should be dismissed with prejudice.

23. The plaintiff's Complaint, and all claims and/or causes of action contained therein may be barred, in whole or in part, due to the **failure of the Plaintiff to mitigate its damages**, if any, and the Plaintiff is therefore barred from the relief demanded in its Complaint.

24. To the extent that the reconveyance and cancellation of record of the deed of trust purportedly owned by Plaintiff was the result of mistake, **such mistake was a unilateral mistake caused solely by the negligence of Plaintiff**, and not caused by any actions of Defendants. Accordingly, Plaintiff should be denied the relief demanded in its Complaint.

25. The litigation in this matter has only recently begun. Therefore, the Defendants are, at this time, stating the affirmative defenses that are currently known to them. The Defendants **reserve the right to amend their Answer**, in order to incorporate additional affirmative defenses and counterclaims as such defenses and counterclaims are revealed during the course of ongoing discovery in this litigation.

26. To the extent that judgment, in any amount, is awarded in this action in favor of Plaintiff, **Defendants are entitled to have all appropriate set-offs imposed against that judgment**, in amounts to be established at the time of trial.

### **ATTORNEYS FEES**

As a result of the filing of the Complaint by the Plaintiff against Defendants, Defendants have has been obligated to and have in fact retained the services of counsel to assist it in pursuing its defense of the Complaint and pursing additional affirmative matters as the litigation goes forward. Defendants are entitled to recovery of all of its costs, attorneys fees, and expenses incurred and all additional sums incurred by Defendants in the pursuit of its defense pursuant to the applicable provisions of Idaho law and/or the Idaho Rules of Civil Procedure including, but not limited to, Rule 54, I.R.C.P., and Idaho Code §§ 12-120, 12-121 and 12-123.

### **JURY DEMAND**

This answering defendant hereby demands trial by jury of all matters set forth in the Complaint and the Answer properly so tried pursuant to the provisions of Idaho Rule of Civil Procedure 38.

WHEREFORE, after having fully answered the Plaintiff's Complaint, asserting affirmative defenses, requesting an award of attorney's fees and asserting the right to jury trial, Defendant, respectfully requests that the Court enter judgment as follows:

1. That the Plaintiff's Complaint, and each claim and/or cause of action stated therein be dismissed with prejudice with the plaintiff taking nothing thereby;

2. That to the extent that the financial damages caused to Defendants by the fraudulent, negligent and commercially unreasonable conduct of Plaintiff, and its agents and employees, including Plaintiff's violations of the statutes or common law principles set forth in Defendant's Affirmative Defenses set forth herein, exceed the amounts claimed by Plaintiff under



the deed of trust and underlying promissory note referenced herein, that such amount be awarded to Defendants in the form of a monetary judgment against Plaintiff.


3. That the Court award to the Defendant all of its attorneys fees incurred in responding to and pursuing a defense to the Plaintiff's Complaint;

4. That the Court award to the Defendants all costs and expenses incurred by said Defendant in responding to the Plaintiff's Complaint;

5. That the Court award to the Defendants such other and additional relief which the Court deems just and appropriate when all facts and circumstances are taken into account.

DATED this 17~~th~~ day of June, 2010.

John Curtis Hucks, Attorney at Law, P.C.

By   
John Curtis Hucks  
Attorney for Defendants

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the above Answer to Complaint and Demand for Jury Trial has been served via U.S. Mail and via email attachment this 17~~th~~ day of June, 2010 upon:

Derrick J. O'Neill  
O'Neill Law, PLLC  
300 Main Street, Suite 150  
Boise, ID 83702  
"Derrick Oneill" <derrick@oneillpllc.com>

  
John Curtis Hucks

FILED

JAN - 3 2011 2:00pm

SHERRY WARD, CLERK

*Sherry Ward*

JOHN CURTIS HUCKS  
ATTORNEY AT LAW, P.C.  
P.O. Box 737  
New Meadows, ID 83654  
Tel: (208) 347-4128; Facsimile: (208) 347-4128  
huckslaw@yahoo.com  
ISB No. 6473  
Attorney for Defendants/Counterclaimants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA SHEETS;  
and DOES 1-10 as individuals with an interest in  
the property legally described as:

Township 22 North, Range 1 East, Boise  
Meridian, Adams County, Idaho  
Section 16: A parcel of land in the NE1/4NE1/4  
lying Westerly of the Westerly line of the right-of-  
way of U.S. Highway 95, as it existed in 1977  
EXCEPTING THEREFROM the following  
parcel:

Commencing at a point on the south line of the  
NE1/4NE1/4 as intersected by the West line of  
U.S. Highway 95 (as established in 1953), the  
REAL POINT OF BEGINNING;  
Thence Northeasterly along the West line of said  
Highway 550 feet;  
Thence West and parallel to the South line of the  
NE1/4NE1/4 550 feet;  
Thence Southeasterly and parallel to the West line  
of said Highway 550 feet to the South line of the  
NE1/4NE1/4;  
Thence along said South line 550 feet to the  
REAL POINT OF BEGINNING.

Which may commonly be known as: 5603  
Highway 95, New Meadows, Idaho, 83654,

Case No. CV-2010-2564

**COUNTERCLAIM AND DEMAND  
FOR JURY TRIAL**

Defendants.

RALPH E. SHEETS, JR. and DEBRA SHEETS,

Defendants / Counterclaimants,

vs.

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff / Counterdefendant

COMES NOW Counterclaimants, Ralph E. Sheets, Jr. and Debra Sheets (hereinafter "Sheets") by and through its attorney of record John Curtis Hucks, Attorney at Law, P.C., and for their Counterclaim against Countrywide Home Loans, Inc. (hereinafter "Countrywide-BofA") state and allege as follows.

#### **JURISDICTION AND VENUE**

1. Sheets are residents of Adams County, Idaho and own real property in said county that is the subject of this action.
2. This counterclaim arises from the same transaction as the Complaint filed by Countrywide.
3. This Court has personal and subject matter jurisdiction over this matter and venue is proper in the county of Adams, state of Idaho.

#### **ALLEGATIONS COMMON TO ALL COUNTS**

4. On or about December 21, 2004, Sheets obtained a residential mortgage loan from Countrywide for property owned and occupied by Sheets in Adams County, Idaho. The loan was represented by a Note and Deed of Trust dated December 21, 2004 and the Deed of Trust was

recorded on December 28, 2004 as Instrument #107860, Official Records of Adams County, Idaho. A true copy of the Note and Deed of Trust were previously attached to Countrywide's Complaint in this matter as Exhibit "A", and said documents are hereby incorporated by reference.

5. Between December 2004 and April 2009, Sheets paid the amounts due under the Note and performed all other obligations under the Note and Deed of Trust.

6. In April 2009, Sheets applied in writing to Bank of America Home Loans (hereinafter "Countrywide-BofA") for refinancing of their residence. At the time of said application, Countrywide-BofA was the successor by merger and acquisition to Countrywide, and had control, possession, and access to all books and records of Countrywide relating to the 2004 residential loan to Sheets referenced herein, including the fact that the improvements on the real property owned and occupied by Sheets consisted of a manufactured home and other improvements.

7. As part of the refinancing process, Sheets provided in a timely and accurate manner all information requested by Countrywide-BofA, including financial information and information regarding the subject real property. In addition to submitting written information as requested, Sheets had multiple telephone conferences with loan representatives of Countrywide-BofA, during which the Countrywide-BofA representative made numerous representations regarding the terms and conditions of the pending loan application, upon which representations Sheet reasonably relied.

8. At the time of such telephone conferences, Sheets was advised that said conferences were being recorded and preserved.

9. Despite the timely submission by Sheets of all information requested by Countrywide-BofA representatives, the loan application languished for over seven (7) months. During said period, Sheets and Countrywide-BofA representatives had numerous other telephone conferences regarding the status of the application. During those conferences the Countrywide-BofA representative offered various excuses for the delay in completing the loan process and also made express representations to Sheets regarding concessions and modifications to the loan terms

that Countrywide-BofA would make in consideration for the delays. Sheets reasonably relied upon those representations, and believed that the telephone conversations during which those representations were made were being recorded.

10. In November 2009 Countrywide-BofA presented Sheets with proposed closing documents. However, the terms contained in said closing documents were different than the terms that had originally been offered. In addition, the amount of the proposed loan was less than had originally been offered. Finally, the independent loan closer who had been retained by Countrywide-BofA to supervise the closing of the transaction advised Sheets that the loan documentation was inaccurate and refused to allow Sheets to execute the documents. As a result, the loan documents tendered by Countrywide-BofA were not executed by Sheets, and the loan did not close.

11. Following the failed closing in November 2009, Countrywide-BofA unilaterally executed and recorded a reconveyance of the December 21, 2004 Deed of Trust in the Official Records of Adams County. However, because Sheets did not have immediate knowledge of said reconveyance, they continued to tender monthly payments under the 2004 loan.

12. Despite executing and recording the reconveyance of the 2004 loan, Countrywide-BofA thereafter erroneously and falsely reported to credit reporting agencies that both the 2004 loan and the never closed 2009 loan were both in full effect and in default. Further, during the period following the failed November 2009 closing, Countrywide-BofA failed to properly credit payments made by Sheets under the 2004 loan. The erroneous credit reports made by Countrywide-BofA severely damaged the credit rating of Sheets.

13. Between November 2009 and March 2010, Sheets, with the assistance of then legal counsel, made continued and concerted efforts to get Countrywide-BofA to resolve the problems with the application of loan payments and the erroneous credit reports, without success. To the best knowledge of Sheets the erroneous credit reports have still not been corrected.

14. In June 2010, and prior to the filing of this counterclaim, current counsel for Sheets served upon counsel for Countrywide-BofA written interrogatories and requests for

production of documents related to this matter, including but not limited to requests for transcripts or recordings of taped conversations between Sheets and Countrywide-BofA representatives that took place during the period following the April 2009 loan application. Countrywide-BofA has not produced any of the requested transcripts, nor provided any explanation of their existence or non-existence.

### **COUNT ONE - BREACH OF CONTRACT**

15. Sheets realleges and incorporates the allegations contained in Paragraphs 1 through 14 above as though fully set forth herein.

16. Based upon the foregoing conduct, as set forth in this Counterclaim, Countrywide-BofA has breached the terms of the contractual agreements entered into between the parties, which breach proximately caused financial damages to Sheets equal to or in excess of the amounts claimed by Countrywide-BofA pursuant to the 2004 deed of trust and underlying promissory note, in an amount to be established at the time of trial.

### **COUNT TWO - VIOLATION OF THE IDAHO CONSUMER PROTECTION ACT**

17. Sheets realleges and incorporates the allegations contained in Paragraphs 1 through 14 above as though fully set forth herein.

18. Countrywide-BofA, through its agents and employees have engaged in conduct in violation of the Idaho Consumer Protection Act, Title 48, Chapter 6, Idaho Code, which conduct proximately caused financial damages to Sheets equal to or in excess of the amounts claimed by Countrywide-BofA pursuant to the 2004 deed of trust and underlying promissory note, in an amount to be established at the time of trial.

### **COUNT THREE - VIOLATION OF THE FEDERAL TRUTH IN LENDING ACT**

19. Sheets realleges and incorporates the allegations contained in Paragraphs 1 through 14 above as though fully set forth herein.

20. Countrywide-BofA, through its agents and employees have engaged in conduct in violation of the federal Truth in Lending Act, 15 U.S.C. §1601, et seq., which conduct proximately caused financial damages to Sheets equal to or in excess of the amounts claimed by Countrywide-BofA pursuant to the 2004 deed of trust and underlying promissory note, in an amount to be established at the time of trial.

**COUNT FOUR -  
VIOLATION OF THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT**

21. Sheets realleges and incorporates the allegations contained in Paragraphs 1 through 14 above as though fully set forth herein.

22. Countrywide-BofA, through its agents and employees have engaged in conduct in violation of the federal Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq., which conduct proximately caused financial damages to Sheets equal to or in excess of the amounts claimed by Countrywide-BofA pursuant to the 2004 deed of trust and underlying promissory note, in an amount to be established at the time of trial.

**COUNT FIVE - VIOLATION OF THE FEDERAL FAIR CREDIT REPORTING ACT**

23. Sheets realleges and incorporates the allegations contained in Paragraphs 1 through 14 above as though fully set forth herein.

24. Countrywide-BofA, through its agents and employees have engaged in conduct in violation of the federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq., which conduct proximately caused financial damages to Sheets equal to or in excess of the amounts claimed by Countrywide-BofA pursuant to the 2004 deed of trust and underlying promissory note, in an amount to be established at the time of trial.

**COUNT SIX - SLANDER OF CREDIT**

25. Sheets realleges and incorporates the allegations contained in Paragraphs 1 through 14 above as though fully set forth herein.

26. Countrywide-BofA, through its agents and employees have engaged in conduct which constitutes slander of credit, which conduct proximately caused financial damages to Sheets equal to or in excess of the amounts claimed by Countrywide-BofA pursuant to the 2004 deed of trust and underlying promissory note, in an amount to be established at the time of trial.

#### **COUNT SEVEN - FRAUD IN THE INDUCEMENT**

27. Sheets realleges and incorporates the allegations contained in Paragraphs 1 through 14 above as though fully set forth herein.

28. Countrywide-BofA, through its agents and employees engaged in conduct which fraudulently induced Defendants to pursue refinancing of their personal residence, which conduct proximately caused financial damages to Sheets equal to or in excess of the amounts claimed by Countrywide-BofA pursuant to the 2004 deed of trust and underlying promissory note, in an amount to be established at the time of trial.

#### **DEMAND FOR JURY TRIAL**

29. Sheets realleges and incorporates the allegations contained in Paragraphs 1 through 28 above as though fully set forth herein.

30. Sheets hereby demands a trial by jury as to all issues properly so triable as set forth in this Counterclaim.

#### **ATTORNEYS FEES**

31. Sheets realleges and incorporates the allegations contained in Paragraphs 1 through 28 above as though fully set forth herein.

32. Sheets has been required to obtain the services of legal counsel to assist it in preparation and prosecution of this Counterclaim. Sheets should be awarded their attorneys fees and costs, including prejudgment interest, incurred in the defense of the Complaint filed by Countrywide-BofA in this action together with the costs and attorneys fees incurred in pursuing this Counterclaim, and pursuant to Idaho Rule of Civil Procedure 54, and Idaho Code §§ 12-120 and 12-121.




WHEREFORE, after having asserted its Counterclaim against Countrywide-BofA, and asserting the right to trial by jury, Sheets hereby requests judgment as follows:

1. That judgment be entered in favor of Sheets in an amount to be established at trial.
2. That the Sheets be awarded their attorneys fees.
3. That Sheets be awarded their costs and expenses incurred in pursuing this Counterclaim.
4. That the court award to Sheets such additional and supplemental relief as to which the court deems just and appropriate under the circumstances.

DATED this 31st day of December, 2010.

John Curtis Hucks  
Attorney at Law, P.C.

By

  
John Curtis Hucks  
Attorney for Defendants

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above Counterclaim and Demand for Jury Trial has been served via U.S. Mail this 31st day of December, 2010 upon:

Derrick J. O'Neill  
O'Neill Law, PLLC  
300 Main Street, Suite 150  
Boise, ID 83702

  
John Curtis Hucks

FILED

JUN 14 2011 2:30pm

SHERRY WARD, CLERK  
*Sherry Ward*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS ,  
INC.,

Plaintiff,

vs.

RALPH SHEETS, JR. and DEBRA  
SHEETS; and DOES 1-10, as individuals  
with an interest in the property legally  
described as: (description as set forth in  
the complaint),

Defendants.

CASE NO. CV10-2564

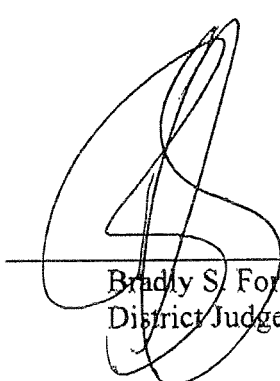
ORDER FOR MEDIATION

IT IS HEREBY ORDERED and this does ORDER:

This civil case is referred to mediation pursuant to I.R.C. P. 16(k).

The parties are to provide the Court with a stipulation of a selected mediator or each party is to nominate three persons to served as mediator and report their selection to the Court no later than twenty-eight (28) days from the date of this order from which the Court will select a mediator. The parties shall each pay one-half (1/2) of the mediator's fees and expenses.

Dated this 14<sup>th</sup> day of June, 2011.

  
Brady S. Ford  
District Judge

CERTIFICATE OF SERVICE

STATE OF IDAHO                    )  
  ) ss  
COUNTY OF ADAMS                )

I hereby certify that I served true and correct copies of the foregoing document upon the following:

- Upon counsel for plaintiff:

Derrick J. O'Neill  
Attorney at Law  
300 Main Street, Ste. 150  
Boise, Idaho 83702   Fax 208-854-3998

Eric R. Coakley  
Attorney at Law  
410 17<sup>th</sup> Street, Ste. 2400  
Denver, Colorado 80202   Fax 303-534-1313


- and upon counsel for the defendant:

John Curtis Hicks  
Attorney at Law  
P.O. Box 737  
New Meadows, Idaho 83654   Fax 347-4128

either by depositing the same in the U.S. mail, first class postage prepaid, or by personal service.

Dated this 15 day of June, 2010.

Sherry Ward, Clerk  
Clerk of District Court

  
Deputy Clerk

FILED

AUG - 2 2011 4:15 PM

SHERRY WARD, CLERK

*Sherry Ward*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, )  
INC., )

Plaintiff, )

) Case No. CV-2010-2564

-vs- )

) ORDER ON MOTION TO DISMISS  
) COUNTERCLAIMS AND MOTION TO  
) COMPEL/PROTECTIVE ORDER

RALPH SHEETS, JR., and DEBRA )  
SHEETS; and DOES 1-10, as individuals )  
with an interest in the property legally )  
described as : (description as set forth in )  
the complaint), )

Defendants. )  
\_\_\_\_\_ )

**Procedural History**

On March 30, 2010, Plaintiff Countrywide Home Loans Inc. filed a Complaint seeking Rescission of Reconveyance of a deed for real property owned by Defendants Ralph and Debra Sheets. On June 12, 2010, the Sheets filed an Answer to Complaint and Demand for Jury Trial and asserted a number of Affirmative Defenses against the Complaint. On January 3, 2011, the Sheets filed a Counterclaim and Demand for Jury Trial asserting claims of Breach of Contract,

Violation of Idaho Consumer Protection Act, Violation of the Federal Truth in Lending Act, Violation of the Federal Debt Collection Practices Act, Violation of the Federal Fair Credit Reporting Act, Slander of Credit, and Fraud in the Inducement. On April 22, 2011, Countrywide filed a Motion to Dismiss Counterclaims and a Memorandum in Support. The Sheets filed a Response to the Motion to Dismiss and a Motion to Compel Discovery/Motion for Protective Order/Motion for Enlargement of Time on May 19, 2011. Countrywide filed a Reply in Support of the Motion to Dismiss on May 25, 2011 and a Response to the Motion to Compel and other motions on May 27, 2011. Oral argument was held on June 3, 2011. Attorneys Derrick O'Neill and Eric Coakley appeared on behalf of Countrywide. John Hucks appeared with Debra Sheets. Following oral argument the parties asked for additional time to submit supplemental briefing on the pending motions and the court granted that extension of time and scheduled oral ruling on the pending motions for August 5, 2011. However, the court notes that no supplemental briefing has been filed in support or opposition to the pending motions.

In addition, the court notes that on June 14, 2011, it issued an Order for Mediation and the court has been informed that the parties will be attending mediation on August 8, 2011. In addition, the court notes that Countrywide has filed a Motion for Judgment on the Pleadings which is scheduled for hearing on August 5, 2011.

#### **Motion to Dismiss**

Countrywide asks this court to dismiss the Sheets' counterclaims pursuant to Idaho Rule of Civil Procedure 12(b)(6). As noted above, the Sheets asserted a number of counterclaims in this action including claims of Breach of Contract, Violation of Idaho Consumer Protection Act, Violation of the Federal Truth in Lending Act, Violation of the Federal Debt Collection Practices Act, Violation of the Federal Fair Credit Reporting Act, Slander of Credit, and Fraud in the

Inducement. Countrywide asserts that the Counterclaim and Demand for Jury Trial fails to state claims upon which relief can be granted to the Sheets. The Sheets have asked the court to deny this motion, to require Countrywide to respond to discovery as addressed below, and to require Countrywide to file an Answer to the Counterclaim.

Idaho Rule of Civil Procedure 12(b)(6) allows a party to seek dismissal of a claim or an action for the opposing party's failure to state a claim upon which relief can be granted. IRCP 12(b)(6). A motion to dismiss under this rule must be considered in conjunction with Idaho Rule of Civil Procedure 8(a) which sets forth the requirements for pleading a claim and calls for "a short and plain statement of the claim showing that the pleader is entitled to relief" and a demand for relief. *Harper v. Harper*, 122 Idaho 535, 835 P.2d 1346 (Ct. App. 1992); IRCP 8(a). A court may grant a motion to dismiss pursuant to IRCP 12(b)(6) only "when it appears beyond doubt that the plaintiff can prove no set of facts in support of [the] claim which would entitle [the plaintiff] to relief." *Id.* If the Complaint, evaluated under the liberal pleading standards of IRCP 8, shows that the plaintiff may be entitled to some relief, the court should not dismiss the action or the claim. It is the policy of this state that every litigant shall have a day in court and as long as the defendant has been informed of the material facts upon which the action is based and basis for the demand for relief, the court should allow the action to proceed. *See Clark v. Olsen*, 110 Idaho 323, 715 P.2d 993 (1986). In determining the merits of a motion to dismiss, the court may only consider those facts that appear in the complaint, and any facts that the court may properly judicially notice pursuant to Idaho Rule of Evidence 201. *Hellickson v. Jenkins*, 118 Idaho 273, 276, 796 P.2d 150, 153 (Ct.App.1990). All inferences are viewed in favor of the non-moving party. *Owsley v. Idaho Industrial Com'n*, 141 Idaho 129, 106 P.3d 455 (2005).

### Breach of Contract

In their first counterclaim, the Sheets assert that "Countrywide-BofA has breached the terms of the contractual agreements entered into between the parties, which breach proximately caused financial damages to Sheets." (Counterclaim ¶16). In the factual allegations, the Sheets refer to both the 2004 loan and deed, and the 2009 failed loan modification process. (Counterclaim ¶ 4, 6, 7, 9-13). It is undisputed that the parties entered into a contract in 2004, and there is a factual question as to whether or not the parties entered into a contract in 2009 prior to the failed loan closing. Countrywide argues that this counterclaim should be dismissed because the Sheets have failed to show what contract was allegedly breached, how it was breached and what damages resulted from the breach. However, given the liberal pleading standards of IRCP 8 and giving all reasonable inferences to the Sheets as to their breach of contract claim, the court cannot find, at this time, as a matter of law that the Sheets are not entitled to relief on this claim. The motion to dismiss this counterclaim is denied.

### Idaho Consumer Protection Act

In their second counterclaim, the Sheets state "Countrywide-BofA, through its agents and employees have engaged in conduct in violation of the Idaho Consumer Protection Act, Title 48, Chapter 6, Idaho Code, which conduct proximately caused financial damages to Sheets." (Counterclaim ¶ 18). Countrywide argues that this claim fails because I.C. 48-603 and 48-608(1) requires "ascertainable loss of money or property..." and a "misleading, false, deceptive act or practice." The Sheets have not set forth specific conduct that they allege to be a violation of the Idaho Consumer Protection Act (ICPA).

The ICPA, codified at Idaho Code 48-601 *et seq* provides protections to consumers from "unfair methods of competition and unfair or deceptive acts or practices." I.C 48-603. In this

case, while the Sheets have not identified specific conduct, they have made factual allegations about the conduct of the Countrywide-BofA representatives during the process of the 2009 failed loan and as to the acts of Countrywide-BofA during the time that the Sheets were attempting to resolve the confusion regarding the 2004 reconveyance and the fact that the bank reported both the 2004 and 2009 loans on the Sheets' accounts. Thus, at this time, the court finds that giving all reasonable inferences to the Sheets and in light of the liberal pleading standards provided under the Idaho Rules of Civil Procedure, the motion to dismiss the ICPA counterclaim is denied.

#### Federal Truth in Lending Act

In this counterclaim, the Sheets state that "Countrywide-BofA, through its agents and employees have engaged in conduct in violation of the federal Truth in Lending Act, 15 U.S.C. §1601, *et seq.*, which conduct proximately caused financial damages to Sheets..." (Counterclaim ¶ 20). Countrywide seeks to dismiss this counterclaim because the Sheets have failed to identify how it violated this Act and because there is an applicable one year statute of limitations.

The federal Truth in Lending Act is codified at 15 U.S.C. §1601, *et seq.* 15 U.S.C. §1640(e) provides that "[a]ny action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation." In this case there are two potential transactions to which this counterclaim may apply and the Sheets have failed to specify both the alleged conduct that violates the Act and which transaction is at issue. The court finds that to the extent that the Sheets are making a claim regarding the 2004 transaction, the claim would be barred by the one year statute of limitations found in 15 U.S.C. §1640(e). In addition, the court finds that to the extent that the act would be applicable to the 2009 transaction, the Sheets' allegations indicate



that the failed loan closing occurred in November 2009 and this Counterclaim was not filed until January 2011. Thus, any alleged violation of the Act prior to and on or about November 2009 is barred by the one year statute of limitations. Countrywide's motion to dismiss this counterclaim is granted as the Sheets have failed to identify a specific violation of the Act and because the only allegations detailed in the counterclaim all fall outside the one year statute of limitations. The motion to dismiss this counterclaim is granted.

#### Federal Fair Debt Collection Act

The Sheets' counterclaim on this issue states that, "Countrywide-BofA, through its agents and employees have engaged in conduct in violation of the federal Fair Debt Collections Act (FDCPA), 15 U.S.C. § 1692 *et seq.*, which conduct proximately caused financial damages to Sheets..." (Counterclaim, ¶ 22). Sheets does not provide specific allegations as to what conduct Countrywide undertook that would be a violation of the FDCPA. Countrywide argues that it is not a debt collector under the FDCPA and that Sheets has not stated a claim upon which relief may be granted.

The FDCPA defines "debt collector" as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. §1692a(6). The FDCPA provides that a "debt collector" who fails to comply with the Act is liable for actual damages and any additional damages not to exceed \$1000. 15 U.S.C. §1692k.

In this case, even giving all reasonable inferences to the favor of the Sheets, the court must dismiss this counterclaim. The Sheets have failed to specify why Countrywide should be considered a "debt collector" under the Act, and have failed to specify which acts Countrywide

undertook that might be considered a violation of the Act. In addition, the court notes that Countrywide is not, through this action, seeking to collect a debt and thus, the Sheets have failed to state a claim upon which this court could grant relief pursuant to the FDCPA. The motion to dismiss this counterclaim is granted.

Fair Credit Reporting Act

In this counterclaim, the Sheets allege "Countrywide-BofA, through its agents and employees have engaged in conduct in violation of the federal Fair Credit Reporting Act (FCRA), 15 U.S.C. §1681 *et seq.*, which conduct proximately caused financial damages to Sheets..." (Counterclaim, ¶ 24). The factual allegations in the Counterclaim indicate that the Sheets allege the following:

12. Despite executing and recording the reconveyance of the 2004 loan, Countrywide-BofA thereafter erroneously and falsely reported to credit reporting agencies that both the 2004 loan and the never closed 2009 loan were both in full effect and in default. Further, during the period following the failed November 2009 closing, Countrywide-BofA failed to properly credit payments made by Sheets under the 2004 loan. The erroneous credit reports made by Countrywide-BofA severely damaged the credit rating of Sheets.

13. Between November 2009 and March 2010, Sheets, with the assistance of then legal counsel, made continued and concerted efforts to get Countrywide-BofA to resolve the problems with the application of loan payments and the erroneous credit reports, without success. To the best knowledge of Sheets, the erroneous credit reports have not been corrected.

Counterclaim, ¶12-13.

Countrywide seeks to dismiss this counterclaim because the FCRA only allows for a claim against a party furnishing credit information who negligently or willfully fails to properly investigate a dispute. Countrywide argues that 15 USC §1681s-2 and 15 USC §1621s-2(b) applies because the only private cause of action under this act is against a furnisher of information who fails to properly investigate a dispute regarding the accuracy of information provided to a consumer reporting agency. Countrywide argues that the Sheets' claim fails

because they have not alleged that they attempted to resolve this issue in the proper manner under the action and to take advantage of the remedies available under the act.

The FCRA provides the standards for conduct of persons furnishing, distributing, and using credit information of consumers. The Act also provides remedies for violations of the requirements of the Act. In this case, the Sheets have made an allegation that Countrywide acted improperly and have supported that allegation with the above factual allegations. It may be that the Sheets have not taken advantage of the remedies available to them under the FRCA and may be barred from pursuing this claim. However, at this time, the court will deny the motion to dismiss given all reasonable inferences to the Sheets the court cannot find as a matter of law that the Sheets have failed to state a claim upon which relief can be granted. The motion to dismiss this counterclaim is denied.

#### Slander of Credit

The Sheets' Slander of Credit counterclaim is related to the FRCA claim just addressed. The court finds that the factual allegations cited above are enough to allow the Sheets' claim on this issue to survive the motion to dismiss. The court adopts the reasoning and decision detailed above as to the FRCA counterclaim. The motion to dismiss this counterclaim is denied.

#### Fraud in the Inducement

In their final counterclaim asserted, the Sheets state that "Countrywide-BofA, through its agents and employees engaged in conduct which fraudulently induced Defendants to pursue refinancing of their personal residence, which conduct proximately caused financial damages to the Sheets." (Counterclaim, ¶28). In reviewing the factual allegations of the Counterclaim, the Sheets state the following (in relevant part):

6. In April 2009, Sheets applied in writing to Bank of America Home Loans (hereinafter "Countrywide-BofA") for refinancing of their residence.

7. In addition to submitting written information as requested, Sheets had multiple telephone conferences with loan representatives of Countrywide-BofA, during which the Countrywide-BofA representative made numerous representations regarding the terms and conditions of the pending loan application, upon which representations Sheets reasonably relied.

9. During those conferences the Countrywide-BofA representative offered various excuses for the delay in completing the loan process and also made express representations to Sheets regarding concessions and modifications to the loan terms that Countrywide-BofA would make in consideration for the delays. Sheets reasonably relied upon those representations...

Counterclaim, ¶¶6,7,9 (in relevant part).

Countrywide seeks to dismiss this counterclaim because the Sheets have failed to comply with the pleading standards for fraud pursuant to Idaho Rule of Civil Procedure 9(b). That rule states "[i]n all averments of fraud...the circumstances constituting fraud...shall be stated with particularity." IRCP 9(b). The elements of fraud are (1) a statement or a representation of fact; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity; (5) the speaker's intent that there be reliance; (6) the hearer's ignorance of the falsity of the statement; (7) reliance by the hearer; (8) justifiable reliance; and (9) resultant injury. *Chavez v. Barrus*, 146 Idaho 212, 192 P.3d 1036 (2008). When a party fails to properly plead this cause of action with particularity, the court is justified in dismissing the claim. *Dengler v. Hazel Blessinger Family Trust*, 141 Idaho 123, 106 P.3d 449 (2005). In *Dengler*, the party asserting fraud pled the elements of fraud as listed above but failed to plead specific factual allegations to support the elements and the Idaho Supreme Court upheld the district court's decision to dismiss the claim pursuant to Idaho Rule of Civil Procedure 12(b)(6). In this case, the Sheets have not pled the elements of fraud. In addition, the above referenced factual allegations do not establish, even granting all reasonable inferences in favor of the Sheets, that the Countrywide-BofA representative made false and/or other representations that damaged the Sheets. The court does not find that the Sheets have pled

fraud with particularity as is required by IRCP 9(b) and this counterclaim is dismissed. Countrywide's motion to dismiss this counterclaim is granted.

**Motion to Compel Response to Discovery and Motion for Protective Order and  
Enlargement of Time to Respond to Plaintiff's Discovery Requests**

The Sheets ask the court for an order compelling Countrywide to file a full and complete response to the outstanding First Set of Interrogatories and Request for Production of Documents served on June 17, 2010 as well as for entry of a Protective Order and Order Enlarging Time to allow the Sheets additional time to respond to the Plaintiff's discovery request until after such time that Countrywide has fully responded to the Sheets' outstanding discovery request. The Sheets allege that they made a good faith effort to resolve these discovery issues prior to filing the current motion as they are required to do so by Idaho Rule of Civil Procedure 37. The Sheets argue that while they have received over 600 pages of discovery from Countrywide that Countrywide has failed to provide substantive narrative responses to explain the documents provided. In addition, the Sheets argue that they have not been provided the following:

1. Copies of the actual closing documents proffered by Countrywide to the Sheets at the time of the failed 2009 loan closing;
2. Any documentation or narrative explanation as to why the 2009 loan approval process took over six months to reach closing;
3. Any documentation or narrative explanation as to why the 2009 loan did not close pursuant to the previously issued loan approval;
4. Any transcripts or recordings of numerous telephone calls between the Sheets and Paul Campbell, the primary loan contact person, for calls that occurred between April and December 2009;
5. Any documentation or narrative explanation as to why Countrywide reconveyed the deed after the 2009 loan failed to close;

6. Any documentation or narrative explanation as to why Countrywide listed on the Sheets' online account summary the simultaneous existence of both the 2004 loan and the 2009 loan for at least four months after the 2009 loan failed to close and the 2004 deed was reconveyed;
7. Any documentation or narrative explanation as to reports made by Countrywide to various credit reporting agencies regarding either or both of the 2004 loan and the failed 2009 loan.

The Sheets do not indicate which specific Interrogatory or Request for Production from their First Set of Interrogatories and Requests for Production is associated with each of the above items. Therefore, for purposes of the following analysis, the numbered paragraphs referred to above will be delineated as "issue" followed by a number intended to correspond to the above numbered paragraphs.

As to issue No. 1 identified above, during oral argument counsel for Countrywide represented that it had provided all the documents in the possession of Countrywide related to the 2009 loan. To the extent that Countrywide has provided all documents in its possession, the motion to compel as to this issue is denied. The court notes that counsel for Countrywide suggested at oral argument that Stewart Title, the escrow agent for the 2009 loan, may have possession of additional documents or files that Countrywide does not have access to and that the Sheets may want to investigate that issue in order to complete their discovery efforts.

As to issue No. 2, Countrywide again asserts that it has disclosed its entire file and the court adopts its decision above that to the extent Countrywide has provided its entire file, the motion to compel is denied. As to the requested narrative responses, the court finds Countrywide's argument that no interrogatory regarding this issue has been propounded and thus, there is not an outstanding request for discovery as to this issue. The court finds that to the extent that the Sheets' Interrogatory No. 4 requests this information, that interrogatory is very broad and doesn't specifically address the requested information sought in issue No. 2. Thus, the

court denies the motion to compel a narrative response at this time but does not foreclose the Sheets from seeking further discovery on this issue as long as such efforts do not conflict with scheduling order in place for this action.

As to issue No.3, again the court notes that to the extent Countrywide has disclosed its file and all documentation, the motion to compel is denied and as with issue No. 1 above, the Sheets may wish to seek further information from Stewart Title who may have a file regarding the failed 2009 loan closing. The court adopts its reasoning and decision above as to the requested narrative response and finds that it cannot compel such a response without a specific interrogatory directed to that issue. Again, the Sheets may continue their discovery efforts but this court will not grant a motion to compel for discovery that has not been directly sought in accordance with the Idaho Rules of Civil Procedure.

As to issue No. 4, Countrywide represented to the court that it has looked for transcripts of calls and recordings of calls and has not been able to locate those items. Counsel for Countrywide represented that oftentimes a client will be informed that a call is being recorded but that is usually for training purposes and that those calls and/or recordings are not transcribed or saved. Based on the Countrywide's representation that it has attempted to locate calls, recordings, and transcripts and has been unable to discover those items, the motion to compel is denied.

As to issue No. 5, Countrywide has represented that it has disclosed its entire file related to the 2009 loan and the failed closing. To the extent that the motion requests additional disclosure of documents, the motion is denied. To the extent that the motion requests a narrative response, the court adopts its prior reasoning and decision as to the need for a specific interrogatory on this issue and denies the motion to compel.

As to issue No. 6, Countrywide has represented that it has disclosed its entire file related to the 2009 loan and the failed closing. To the extent that the motion requests additional disclosure of documents, the motion is denied. To the extent that the motion requests a narrative response, the court adopts its prior reasoning and decision as to the need for a specific interrogatory on this issue and denies the motion to compel.

As to issue No. 7 above, at the oral argument, counsel for Countrywide after conferring with counsel for the Sheets represented to the court that he was now fully aware of what was being requested and that supplemented discovery responses would be provided with respect to No. 7 above which is associated with Sheets' Request for Production No. 7. The motion to compel is granted as to that issue to the extent that Countrywide is able to generate and provide the requested reports.

This court is sympathetic to the Sheets' frustration at trying to recover information from an entity such as Countrywide and its association with the entity of Bank of America. However, this court's authority to order the Plaintiff to disclose information is limited by the Sheets' own request for information and the representations of Countrywide that it has completed the searches necessary to obtain the requested documentation. As noted above, if the Sheets seek further clarification from Countrywide as to the issues above it may proceed to request such information in accordance with the Idaho Rules of Civil Procedure and the scheduling order for this action. The court's ruling on each item identified in Sheets' motion to compel is as described above.

As to the Sheets' request for a protective order and to enlarge time, counsel for Countrywide indicated on the record at oral argument that Countrywide would not object to an extension of time. Neither party identified a specific period for the extension. Thus, this court will not rule on that motion at this time and the Sheets and/or Countrywide may seek further



assistance or direction from the court as to these discovery issues if needed in the future. If the parties cannot agree on a reasonable extension of time for Sheets' responses to discovery, the Sheets' can re-notice their motion up for hearing.

### **Conclusion**

The court has carefully considered the pleadings and the arguments of the parties' with respect to Countrywide's motion to dismiss counterclaims. The court has applied the relevant standards provided by the Idaho Rules of Civil Procedure as noted above and the relevant provisions of the law applicable to the Sheets' counterclaims. For the reasons set forth above, the court grants Countrywide's motion to dismiss the Sheets' counterclaims No. 3, 4, and 7. For the reasons set forth above, the court denies Countrywide's motion to dismiss the Sheets' counterclaims No. 1, 2, 5, and 6.

For the reasons set forth above, the court denies Sheets' motion to compel regarding items one through six described above and grants, subject to the qualifications set forth above, the motion to compel regarding item seven as described above. The court reserves ruling on the Sheets' request for a protective order and to enlarge time based on the attorneys representations made on the record June 3, 2011. Sheets' can re-notice the motion for protective order and to enlarge time if necessary after the parties completed the commitments made on the record June 3, 2011.

Dated this 24 day of August 2011.

  
\_\_\_\_\_  
Bradly S. Ford, District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that on 2 day of August, 2011, s/he served a true and correct copy of the original of the foregoing ORDER ON MOTION TO DISMISS COUNTERCLAIM AND MOTION TO COMPEL/PROTECTIVE ORDER on the following individuals in the manner described:

- upon counsel for plaintiff:

Derrick J. O'Neill

Attorney at Law

300 Main Street, Ste. 150

Boise, Idaho 83702

*email*

Eric R. Coakley

Attorney at Law

410 17<sup>th</sup> Street, Ste. 2400

Denver, Colorado 80202

*fax 303-534-1313*

- upon counsel for defendant:

John Curtis Hicks

Attorney at Law

P.O. Box 737

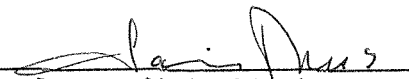
New Meadows, Idaho 83654

*email*

and/or when s/he deposited each a copy of the foregoing ORDER in the U.S. Mail with sufficient postage to individuals at the addresses listed above.

SHERRY WARD. Clerk of the Court

By:

  
Deputy Clerk of the Court

03/03/2011 FAX 14.01 FAX 208 854 3998 O'NEILL LAW PLLC  
Derrick J. O'Neill/ISB #4021  
O'NEILL LAW, PLLC  
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FILED

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SHERRY WARD, CLERK

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[ecoakley@bmalaw.com](mailto:ecoakley@bmalaw.com)

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA  
SHEETS; and DOES 1-10 as individuals  
with an interest in the property legally  
described as:

Township 22 North, Range 1 East, Boise  
Meridian, Adams County, Idaho  
Section 16: A parcel of land in the  
NE1/4NE1/4 lying Westerly of the Westerly  
line of the right-of-way of U.S. Highway 95,  
as it existed in 1977

EXCEPTING THEREFROM the following  
parcel:

Commencing at a point on the south line of  
the NE1/4NE1/4 as intersected by the West  
line of U.S. Highway 95 (as established in  
1953), the REAL POINT OF BEGINNING;  
Thence Northeasterly along the West line of  
said Highway 550 feet;

Case No. CV-2010-2564

ANSWER TO COUNTERCLAIMS

*lele*

Thence West and parallel to the South line of the NE1/4NE1/4 550 feet;  
Thence Southeasterly and parallel to the West line of said Highway 550 feet to the South line of the NE1/4NE1/4;  
Thence along said South line 550 feet to the REAL POINT OF BEGINNING.

Which may commonly be known as: 5603 Highway 95, New Meadows, Idaho, 83654,

Defendants.

COMES NOW Plaintiff, Countrywide Home Loans, Inc. ("Countrywide") by and through its attorney of record, O'Neill Law, PLLC, hereby submits its Motion to Compel Responses to Discovery Requests as follows:

#### ANSWER TO COUNTERCLAIMS

1. Countrywide is without knowledge or information necessary to ascertain the truth or veracity of the allegations contained in paragraph 1 and they are therefore denied.
2. Countrywide denies the allegations set forth at paragraph 2.
3. Countrywide admits the Court has personal and subject matter jurisdiction over the claims asserted in this matter.
4. Countrywide admits the allegations contained in paragraph 4.
5. Countrywide admits that the Sheets made monthly payments required on the note through April of 2009. Countrywide is without knowledge or information necessary to ascertain the truth or veracity of the remaining allegations contained in paragraph 5 and they are therefore denied.
6. Countrywide admits that the Sheets applied for a refinance loan in 2009. Countrywide is without knowledge or information necessary to ascertain the truth or veracity of the remaining allegations contained in paragraph 6 and they are therefore denied.

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7. Countrywide denies the allegations set forth at paragraph 7.

8. Countrywide is without knowledge or information necessary to ascertain the truth or veracity of the allegations contained in paragraph 8 and they are therefore denied.

9. Countrywide denies the allegations set forth at paragraph 9.

10. Countrywide admits that the refinance loan did not close in November of 2009. Countrywide is without knowledge or information necessary to ascertain the truth or veracity of the remaining allegations contained in paragraph 10 and they are therefore denied.

11. Countrywide admits that it erroneously recorded a reconveyance of the property. Countrywide is without knowledge or information necessary to ascertain the truth or veracity of the remaining allegations contained in paragraph 11 and they are therefore denied.

12. Countrywide denies the allegations set forth at paragraph 12.

13. Countrywide is without knowledge or information necessary to ascertain the truth or veracity of the allegations contained in paragraph 13 and they are therefore denied.

14. Paragraph 14 does not appear to contain a statement of fact to which a responsive pleading is required. Rather, it appears to innappropriately attempt to state a motion to compel. To the extent that paragraph 14 contains an averment of fact, it is denied.

#### **ANSWER TO FIRST CLAIM FOR RELIEF – BREACH OF CONTRACT**

15. Countrywide incorporates all other paragraphs of this answer as if fully set forth herein.

16. Countrywide denies the allegations set forth at paragraph 16.

#### **ANSWER TO SECOND CLAIM FOR RELIEF – IDAHO CONSUMER PROTECTION**

**ACT**

17. Countrywide incorporates all other paragraphs of this answer as if fully set forth herein.

18. Countrywide denies the allegations set forth at paragraph 18.

**ANSWER TO THIRD CLAIM FOR RELIEF – FEDERAL TRUTH IN LENDING ACT**

19. Countrywide incorporates all other paragraphs of this answer as if fully set forth herein.

20. Countrywide denies the allegations set forth at paragraph 20.

**ANSWER TO FOURTH CLAIM FOR RELIEF- FAIR DEBT COLLECTION**

**PRACTICES ACT**

21. Countrywide incorporates all other paragraphs of this answer as if fully set forth herein.

22. Defendants' counter claims under the FDCPA were dismissed by order of the Court August 2, 2011. To the extent that the allegations set forth in this paragraph nonetheless require an answer, Countrywide denies the allegations set forth at paragraph 22.

**ANSWER TO FIFTH CLAIM FOR RELIEF – VIOLATION OF THE FAIR CREDIT**

**REPORTING ACT**

23. Countrywide incorporates all other paragraphs of this answer as if fully set forth herein.

24. Countrywide denies the allegations set forth at paragraph 24.

**ANSWER TO SIXTH CLAIM FOR RELIEF – SLANDER OF CREDIT**

25. Countrywide incorporates all other paragraphs of this answer as if fully set forth herein.

26. Countrywide denies the allegations set forth at paragraph 26.

**ANSWER TO SEVENTH CLAIM FOR RELIEF – FRAUD IN THE INDUCEMENT**

27. Countrywide incorporates all other paragraphs of this answer as if fully set forth herein.

28. Defendants' counter claims under the FDCPA were dismissed by order of the Court August 2, 2011. To the extent that the allegations set forth in this paragraph nonetheless require an answer, Countrywide denies the allegations set forth at paragraph 28.

## AFFIRMATIVE DEFENSES

### First Affirmative Defense

## Second Affirmative Defense

### Third Affirmative Defense

#### Fourth Affirmative Defense

### Fifth Affirmative Defense

### Sixth Affirmative Defense

### Seventh Affirmative Defense

### Eighth Affirmative Defense

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Ninth Affirmative Defense

Defendants' contract claims are barred by mutual mistakes.

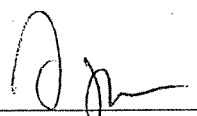
Defendant reserves the right to plead additional affirmative defenses as they become known.

WHEREFORE, Plaintiff Countrywide Home Loan, Inc., respectfully requests the Court enter judgment in its favor on all counterclaims asserted, and for costs and attorney fees, and for any other relief the Court deems just and appropriate under the circumstances.

DATED This 9 day of September, 2011.

O'NEILL LAW, PLLC

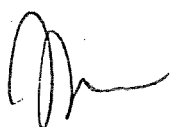
By:

  
Derrick J. O'Neill, Of the Firm  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9 <sup>September</sup> ~~July~~ day of 2011, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

John Curtis Hucks Attorney at Law PO Box 737 New Meadows, ID 83654	<input type="checkbox"/> US Mail <input type="checkbox"/> Facsimile (208) 347-4128 <input checked="" type="checkbox"/> E-Mail
---	---

  
Derrick J. O'Neill



FILED

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Sherry K. Voss  
SHERRY WARD, CLERK

JOHN CURTIS HUCKS  
ATTORNEY AT LAW, P.C.  
P.O. Box 737  
New Meadows, ID 83654  
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Email: huckslaw@yahoo.com  
ISB No. 6473  
Attorney for Defendants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA SHEETS;  
and DOES 1-10 as individuals with an interest in  
the property legally described as:

Township 22 North, Range 1 East, Boise  
Meridian, Adams County, Idaho  
Section 16: A parcel of land in the NE1/4NE1/4  
lying Westerly of the Westerly line of the right-  
of-way of U.S. Highway 95, as it existed in 1977  
EXCEPTING THEREFROM the following  
parcel:  
Commencing at a point on the south line of the  
NE1/4NE1/4 as intersected by the West line of  
U.S. Highway 95 (as established in 1953), the  
REAL POINT OF BEGINNING;  
Thence Northeasterly along the West line of said  
Highway 550 feet;  
Thence West and parallel to the South line of the  
NE1/4NE1/4 550 feet;  
Thence Southeasterly and parallel to the West  
line of said Highway 550 feet to the South line of  
the NE1/4NE1/4;  
Thence along said South line 550 feet to the  
REAL POINT OF BEGINNING.

Which may commonly be known as: 5603  
Highway 95, New Meadows, Idaho, 83654,

Case No. CV-2010-2564

**DEFENDANTS' MOTION FOR  
LEAVE TO FILE AMENDED  
COUNTERCLAIMS AND  
ARGUMENT IN SUPPORT OF  
MOTION**

Defendants.

Defendants, Ralph E. Sheets, Jr. and Debra Sheets (hereinafter "Defendants"), by and through their undersigned counsel, and pursuant to Rule 15(a) of the Idaho Rules of Civil Procedure, respectfully move the Court for leave to file an Amended Counterclaims, a true copy of which is attached hereto.

The Amended Counterclaims adds an additional cause of action for Specific Performance of the loan commitment issued by Plaintiff in connection with the application by Defendants in April 2009 for refinancing of the residential real estate loan that is the subject of this action. The Amended Counterclaims also removes certain statutory claims included in Defendants' original Counterclaims and dismissed by the Court's Order on Motion to Dismiss Counterclaims and Motion to Compel/Protective Order dated August 2, 2011.

### **ARGUMENT**

Rule 15(a) of the Idaho Rules of Civil Procedure provides that a pleading may be amended by leave of court or by written consent of the adverse party. In particular, the Rule provides that "leave shall be freely given when justice so requires."

The decision to grant or refuse permission to amend is left to the sound discretion of the trial court. *Jones v. Watson*, 98 Idaho 606, 570 P.2d 284 (1977). In the interest of justice, the Court should favor liberal grants of leave to amend. *Wichtrom v. North Idaho College*, 111 Idaho 450, 725 P.2d 155 (1986).

The Defendant will not be prejudiced if the Court grants the Defendants' motion in that Plaintiff only filed an Answer to Defendants' original Counterclaims on September 9, 2011, over

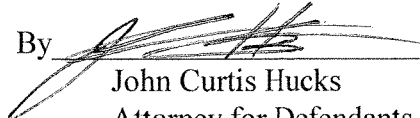
eight months after said pleading was filed. Further, this matter has not yet been scheduled for trial and is still in the motion/discovery phase. Plaintiff will have ample time to prepare defenses to the Defendants' additional cause of action contained in the Amended Counterclaims.

For the reasons set forth herein, Defendants respectfully requests that the Court grant its Motion for Leave to File Amended Counterclaims.

Respectfully submitted this 20th day of September, 2011.

John Curtis Hucks, Attorney at Law, P.C.

By

  
John Curtis Hucks  
Attorney for Defendants

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the above document has been served via email attachment this 20th day of September, 2011 upon:

Derrick J. O'Neill  
O'Neill Law, PLLC  
300 Main Street, Suite 150  
Boise, ID 83702  
derrick@oneillpllc.com

Eric R. Coakley  
Bloom, Murr & Accomazzo, P.C.  
410 17th Street, Suite 2400  
Denver, CO 80202-4402  
ecoakley@bmalaw.com

  
John Curtis Hucks

JOHN CURTIS HUCKS  
ATTORNEY AT LAW, P.C.  
P.O. Box 737  
New Meadows, ID 83654  
Tel: (208) 347-4128; Facsimile: (208) 347-4128  
huckslaw@yahoo.com  
ISB No. 6473  
Attorney for Defendants/Counterclaimants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA SHEETS;  
and DOES 1-10 as individuals with an interest in  
the property legally described as:

Township 22 North, Range 1 East, Boise  
Meridian, Adams County, Idaho  
Section 16: A parcel of land in the NE1/4NE1/4  
lying Westerly of the Westerly line of the right-  
of-way of U.S. Highway 95, as it existed in 1977  
EXCEPTING THEREFROM the following  
parcel:  
Commencing at a point on the south line of the  
NE1/4NE1/4 as intersected by the West line of  
U.S. Highway 95 (as established in 1953), the  
REAL POINT OF BEGINNING;  
Thence Northeasterly along the West line of said  
Highway 550 feet;  
Thence West and parallel to the South line of the  
NE1/4NE1/4 550 feet;  
Thence Southeasterly and parallel to the West  
line of said Highway 550 feet to the South line of  
the NE1/4NE1/4;  
Thence along said South line 550 feet to the  
REAL POINT OF BEGINNING.

Which may commonly be known as: 5603  
Highway 95, New Meadows, Idaho, 83654,

Defendants.

Case No. CV-2010-2564

**AMENDED COUNTERCLAIMS  
AND DEMAND FOR JURY TRIAL**

RALPH E. SHEETS, JR. and DEBRA SHEETS,

Defendants / Counterclaimants,

vs.

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff / Counterdefendant

COMES NOW Counterclaimants, Ralph E. Sheets, Jr. and Debra Sheets (hereinafter "Sheets") by and through its attorney of record John Curtis Hucks, Attorney at Law, P.C., and for their Amended Counterclaims against Countrywide Home Loans, Inc. (hereinafter "Countrywide-BofA") state and allege as follows.

#### **JURISDICTION AND VENUE**

1. Sheets are residents of Adams County, Idaho and own real property in said county that is the subject of this action.
2. This counterclaim arises from the same transaction as the Complaint filed by Countrywide.
3. This Court has personal and subject matter jurisdiction over this matter and venue is proper in the county of Adams, state of Idaho.

#### **ALLEGATIONS COMMON TO ALL COUNTS**

4. On or about December 21, 2004, Sheets obtained a residential mortgage loan (hereinafter the "2004 Loan") from Countrywide Home Loans, Inc. (hereinafter "Countrywide-BOFA") for property owned and occupied by Sheets in Adams County, Idaho. The loan was represented by a Note and Deed of Trust dated December 21, 2004 and the Deed of Trust was recorded on December 28, 2004 as Instrument #107860, Official Records of Adams County, Idaho. A true copy of the Note and Deed of Trust were previously attached to Countrywide-

BOFA's Complaint in this matter as Exhibit "A", and said documents are hereby incorporated by reference.

5. Between December 2004 and April 2009, Sheets paid the amounts due under the Note and performed all other obligations under the 2004 Loan.

6. In April 2009, Sheets applied in writing to Bank of America Home Loans (hereinafter "Countrywide-BofA") for refinancing of their residence. At the time of said application, Countrywide-BofA was the successor by merger and acquisition to Countrywide, and had control, possession, and access to all books and records of Countrywide relating to the 2004 Loan to Sheets referenced herein, including the fact that the improvements on the real property owned and occupied by Sheets consisted of a manufactured home and other improvements. At the time of application, Sheets was fully current under the terms of the 2004 Loan.

7. As part of the refinancing process, Sheets provided in a timely and accurate manner all information requested by Countrywide-BofA, including financial information and information regarding the subject real property. In addition to submitting written information as requested, Sheets had multiple telephone conferences with loan representatives of Countrywide-BofA, specifically with Paul Campbell, who was located in the Dallas-Fort Worth office of Countrywide-BOFA. During those telephone calls, Mr. Campbell made numerous representations regarding the terms and conditions of the pending loan application, upon which representations Sheets reasonably relied. Specifically, Mr. Campbell advised Sheets that he was eligible for a loan based on 80% of the appraised value of the subject property.

8. At the time of such telephone conferences, Sheets was advised that said conferences were being recorded and preserved, and Sheets reasonably relied upon those representations.

9. Despite the timely submission by Sheets of all information requested by Countrywide-BofA representatives; and despite the fact that the loan application was approved as early as June 2009, the loan application languished for over seven (7) months and was not

scheduled for closing. During said period, Sheets and Mr. Campbell had numerous other telephone conferences regarding the status of the application. During those conferences Mr. Campbell offered various excuses for the delay in completing the loan process and also made express representations to Sheets regarding concessions and modifications to the loan terms that Countrywide-BofA would make in consideration for the delays. Sheets reasonably relied upon those representations, and believed that the telephone conversations during which those representations were made were being recorded or otherwise preserved.

10. In October 2009, Sheets was contacted by telephone by an employee or agent of Countrywide-BofA and instructed to meet with a closing agent of Plaintiff in order to close the 2009 loan. As such time, Sheets had not received final closing documents to review. Nonetheless, Sheets proceeded to make arrangements to meet with a third-party loan closer (named unknown) retained by Countrywide-BofA to complete the closing of the loan. Ralph Sheets met the independent loan closer in Grangeville, Idaho on or about October 27, 2009, and was fully prepared to execute loan documentation at that time. However, the independent loan closer advised Sheets that the loan documentation she had been provided by Countrywide-BofA was inaccurate and refused to allow Sheets to either review or execute the documents. As a result, the loan documents tendered by Countrywide-BofA were not executed by Sheets, and the loan did not close. Upon returning home from the aborted closing, Sheets found proposed closing documents which had been sent via overnight delivery. However, the terms contained in said closing documents were different than the terms that had been represented by Paul Campbell. In addition, the amount of the proposed loan was less than had originally been orally offered to Sheets by Paul Campbell.

11. Following the failed October 2009 closing, Sheets continued to contact Countrywide-BofA in an attempt to complete the transaction, but Plaintiff's employees failed to respond to such inquiries. Sheets also continued to make payments under the 2004 loan during the months of November and December 2009, but said payments were not properly processed by Plaintiff.

11. Following the failed closing in October 2009; and solely through its own negligence, Countrywide-BofA unilaterally executed and recorded a reconveyance of the December 21, 2004 Deed of Trust in the Official Records of Adams County. However, because Sheets did not have immediate knowledge of said reconveyance, they continued to tender monthly payments under the 2004 Loan.

12. Despite executing and recording the reconveyance and cancellation of the 2004 Loan, Countrywide-BofA thereafter erroneously and falsely reported to various credit reporting agencies that the canceled and recovered 2004 Loan was still in full effect and in default. Further, during the period following the failed October 2009 closing, Countrywide-BofA failed to properly credit payments made by Sheets under the 2004 Loan. Countrywide-BOFA also falsely listed on Sheets' online account statement that both the 2004 Loan and the never closed 2009 Loan were both in full force and effect. The erroneous credit reports and account entries made by Countrywide-BofA damaged the credit rating of Sheets.

13. Between November 2009 and March 2010, Sheets, with the assistance of prior legal counsel, made continued and concerted efforts to get Countrywide-BofA to resolve the problems with the application of loan payments and the erroneous credit reports, without success. To the best knowledge of Sheets the erroneous credit reports have still not been corrected, even though representatives of Plaintiff expressly agreed to correct such entries.

14. In June 2010, and prior to the filing of this counterclaim, current counsel for Sheets served upon counsel for Countrywide-BofA written interrogatories and requests for production of documents related to this matter, including but not limited to requests for transcripts or recordings of taped conversations between Sheets and Countrywide-BofA representatives that took place during the period following the April 2009 loan application. Countrywide-BofA has not produced any of the requested transcripts, nor provided any credible written explanation of their existence or non-existence.



### **COUNT ONE - BREACH OF CONTRACT**

15. Sheets realleges and incorporates the allegations contained in Paragraphs 1 through 14 above as though fully set forth herein.

16. Pursuant to the terms of 9-505, Idaho Code, a written commitment to lend money is an enforceable agreement. Countrywide-BOFA committed in writing to loan Sheets the sum of \$87,750.00, by approving the application for the 2009 Loan after review of the underlying application documentation. Plaintiff further evidenced said approval by preparing and delivering proposed closing documents to Sheets and to an independent closing agent selected by Plaintiff. Plaintiff has further provided written documentation during the course of discovery in this matter confirming that all outstanding conditions for closing of the 2009 Loan had been met. The actions of Plaintiff constitute confirmation of a commitment to lend money, and thus constitute an enforceable contract.

17. Based upon the foregoing conduct as set forth in this Counterclaim, Countrywide-BofA has breached the terms of the contractual agreements entered into between the parties, which breach proximately caused financial damages to Sheets equal to or in excess of the amounts claimed by Countrywide-BofA pursuant to the 2004 deed of trust and underlying promissory note, in an amount to be established at the time of trial.

### **COUNT TWO - DEMAND FOR SPECIFIC PERFORMANCE OF CONTRACT**

18. Sheets realleges and incorporates the allegations contained in Paragraphs 1 through 16 above as though fully set forth herein.

19. By processing and approving the loan application made by Sheets in connections with the 2009 Loan, and proceeding with presentation of closing documents for said transaction, Countrywide-BofA created an enforceable agreement to lend Sheets money upon the terms agreed to between Sheets and representatives of BofA. Sheets is entitled to the equitable remedy of specific performance of said contractual agreement.



### **COUNT THREE - VIOLATION OF THE IDAHO CONSUMER PROTECTION ACT**

20. Sheets realleges and incorporates the allegations contained in Paragraphs 1 through 16 above as though fully set forth herein.

21. Countrywide-BofA, through its agents and employees have engaged in conduct in violation of the Idaho Consumer Protection Act, Title 48, Chapter 6, Idaho Code, which conduct proximately caused financial damages to Sheets equal to or in excess of the amounts claimed by Countrywide-BofA pursuant to the 2004 deed of trust and underlying promissory note, in an amount to be established at the time of trial.

### **COUNT FOUR - VIOLATION OF THE FEDERAL FAIR CREDIT REPORTING ACT**

22. Sheets realleges and incorporates the allegations contained in Paragraphs 1 through 16 above as though fully set forth herein.

23. Countrywide-BofA, through its agents and employees have provided false information to credit reporting agencies and engaged in conduct in violation of the federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq., which conduct proximately caused financial damages to Sheets equal to or in excess of the amounts claimed by Countrywide-BofA pursuant to the 2004 deed of trust and underlying promissory note, in an amount to be established at the time of trial.

### **COUNT FIVE - SLANDER OF CREDIT**

24. Sheets realleges and incorporates the allegations contained in Paragraphs 1 through 14 above as though fully set forth herein.

25. Countrywide-BofA, through its agents and employees have provided false information to third-party credit reporting agencies, and have engaged in conduct which constitutes slander of credit, which conduct proximately caused financial damages to Sheets equal to or in excess of the amounts claimed by Countrywide-BofA pursuant to the 2004 deed of trust and underlying promissory note, in an amount to be established at the time of trial.

### DEMAND FOR JURY TRIAL

26. Sheets realleges and incorporates the allegations contained in Paragraphs 1 through 24 above as though fully set forth herein.

27. Sheets hereby demands a trial by jury as to all issues properly so triable as set forth in this Counterclaim.

### ATTORNEYS FEES

28. Sheets realleges and incorporates the allegations contained in Paragraphs 1 through 26 above as though fully set forth herein.

29. Sheets has been required to obtain the services of legal counsel to assist it in preparation and prosecution of this Counterclaim. Sheets should be awarded their attorneys fees and costs, including prejudgment interest, incurred in the defense of the Complaint filed by Countrywide-BofA in this action together with the costs and attorneys fees incurred in pursuing this Counterclaim, and pursuant to Idaho Rule of Civil Procedure 54, and Idaho Code §§ 12-120 and 12-121.

WHEREFORE, after having asserted its Counterclaim against Countrywide-BofA, and asserting the right to trial by jury, Sheets hereby requests judgment as follows:

1. That judgment be entered in favor of Sheets in an amount to be established at trial.
2. That the Sheets be awarded their attorneys fees.
3. That Sheets be awarded their costs and expenses incurred in pursuing this Counterclaim.
4. That the court award to Sheets such additional and supplemental relief as to which the court deems just and appropriate under the circumstances.

DATED this \_\_\_\_\_ day of September, 2011.

John Curtis Hucks, Attorney at Law, P.C.

By \_\_\_\_\_  
John Curtis Hucks

Derrick J. O'Neill/ISB #4021  
O'NEILL LAW, PLLC  
300 Main Street, Suite 150  
Boise, Idaho 83702  
Telephone: 208-489-3035  
Facsimile: 208-854-3998  
[derrick@oneillpllc.com](mailto:derrick@oneillpllc.com)

FILED

OCT 13 2011 8:15 AM

SHERRY WARD, CLERK



Eric R. Coakley, *pro hac vice*  
Bloom Murr & Accomazzo, P.C.  
410 17th Street, Suite 2400  
Denver, Colorado 80202  
Phone: 303-534-2277  
Fax: 303-534-1313  
[ecoakley@bmalaw.com](mailto:ecoakley@bmalaw.com)

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA  
SHEETS; and DOES 1-10 as individuals  
with an interest in the property legally  
described as:

Township 22 North, Range 1 East, Boise  
Meridian, Adams County, Idaho  
Section 16: A parcel of land in the  
NE1/4NE1/4 lying Westerly of the Westerly  
line of the right-of-way of U.S. Highway 95,  
as it existed in 1977

EXCEPTING THEREFROM the following  
parcel:

Commencing at a point on the south line of  
the NE1/4NE1/4 as intersected by the West  
line of U.S. Highway 95 (as established in  
1953), the REAL POINT OF BEGINNING;  
Thence Northeasterly along the West line of

Case No. CV-2010-2564

**ORDER GRANTING DEFENDANTS'  
MOTION TO FILE AN AMENDED  
ANSWER AND COUNTERCLAIM**

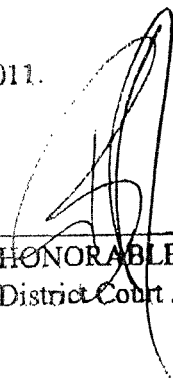
said Highway 550 feet;  
Thence West and parallel to the South line of  
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Thence Southeasterly and parallel to the  
West line of said Highway 550 feet to the  
South line of the NE1/4NE1/4;  
Thence along said South line 550 feet to the  
REAL POINT OF BEGINNING.

Which may commonly be known as: 5603  
Highway 95, New Meadows, Idaho, 83654,

Defendants.

COMES NOW the Court, and Defendants' Motion to File an Amended Counterclaim  
having come for hearing on October 7, 2011, and good cause appearing therefore, and does  
hereby grant Defendants' request for leave to file an Amended Answer and Counterclaim in the  
above-referenced matter.

DATED This 10th day of October, 2011.

  
HONORABLE BRADLY S. FORD  
District Court Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17 day of October, 2011, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

John Curtis Hucks Attorney at Law PO Box 737 New Meadows, ID 83654	<input checked="" type="checkbox"/> US Mail
Derrick J. O'Neill O'Neill Law, PLLC 300 Main Street, Suite 150 Boise, ID 83702	<input checked="" type="checkbox"/> US Mail

SHERRY WARD  
CLERK OF THE DISTRICT COURT

By:

  
Deputy Clerk

Derrick J. O'Neill/ISB #4021  
O'NEILL LAW, PLLC  
300 Main Street, Suite 150  
Boise, Idaho 83702  
Telephone: 208-489-3035  
Facsimile: 208-854-3998  
[derrick@oneillpllc.com](mailto:derrick@oneillpllc.com)

Eric R. Coakley, *pro hac vice*  
Bloom Murr & Accomazzo, P.C.  
410 17th Street, Suite 2400  
Denver, Colorado 80202  
Phone: 303-534-2277  
Fax: 303-534-1313  
[ecoakley@bmalaw.com](mailto:ecoakley@bmalaw.com)

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA  
SHEETS; and DOES 1-10 as individuals  
with an interest in the property legally  
described as:

Township 22 North, Range 1 East, Boise  
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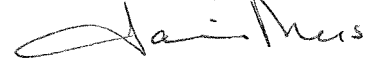
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1953), the REAL POINT OF BEGINNING;  
Thence Northeasterly along the West line of

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OCT 13 2011 8:15 AM

SHERRY WARD, CLERK



Case No. CV-2010-2564

**ORDER GRANTING MOTION TO  
COMPEL**

said Highway 550 feet;  
Thence West and parallel to the South line of  
the NE1/4NE1/4 550 feet;  
Thence Southeasterly and parallel to the  
West line of said Highway 550 feet to the  
South line of the NE1/4NE1/4;  
Thence along said South line 550 feet to the  
REAL POINT OF BEGINNING.

Which may commonly be known as: 5603  
Highway 95, New Meadows, Idaho, 83654,

Defendants.

COMES NOW the Court, and after consideration of the Motion to Compel filed by  
Plaintiff on or about September 9, 2011, and good cause appearing therefore, and does hereby  
order Defendants to respond to Plaintiff's First Set of Interrogatories and Requests for Production  
of Documents on or before October 31, 2011.

DATED This 12<sup>th</sup> day of October, 2011.

  
\_\_\_\_\_  
HONORABLE BRADLY S. FORD  
District Court Judge




CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17 day of October, 2011, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

John Curtis Hucks Attorney at Law PO Box 737 New Meadows, ID 83654	<input checked="" type="checkbox"/> US Mail
Derrick J. O'Neill O'Neill Law, PLLC 300 Main Street, Suite 150 Boise, ID 83702	<input checked="" type="checkbox"/> US Mail

SHERY WARD

CLERK OF THE DISTRICT COURT

By:   
Deputy Clerk

Derrick J. O'Neill/ISB #4021  
O'NEILL LAW, PLLC  
300 Main Street, Suite 150  
Boise, Idaho 83702  
Telephone: 208-489-3035  
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[derrick@oneillpllc.com](mailto:derrick@oneillpllc.com)

FILED

NOV - 3 2011 1:00 pm

SHERRY WARD, CLERK

Eric R. Coakley, *pro hac vice*  
Bloom Murr & Accomazzo, P.C.  
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Phone: 303-534-2277  
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

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RALPH E. SHEETS, JR. and DEBRA  
SHEETS; and DOES 1-10 as individuals  
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Thence Northeasterly along the West line of  
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Case No. CV-2010-2564

**ANSWER TO PLAINTIFF'S  
AMENDED COUNTERCLAIMS**

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the NE1/4NE1/4 550 feet;  
Thence Southeasterly and parallel to the  
West line of said Highway 550 feet to the  
South line of the NE1/4NE1/4;  
Thence along said South line 550 feet to the  
REAL POINT OF BEGINNING.

Which may commonly be known as: 5603  
Highway 95, New Meadows, Idaho, 83654,

Defendants.

COMES NOW Plaintiff, Countrywide Home Loans, Inc. ("Countrywide") by and through  
its attorney of record, O'Neill Law, PLLC, hereby submits its Motion to Compel Responses to  
Discovery Requests as follows:

#### ANSWER TO COUNTERCLAIMS

1. Countrywide is without knowledge or information necessary to ascertain the truth  
or veracity of the allegations contained in paragraph 1 and they are therefore denied.
2. Countrywide denies the allegations set forth at paragraph 2.
3. Countrywide admits the Court has personal and subject matter jurisdiction over  
the claims asserted in this matter.
4. Countrywide admits the allegations contained in paragraph 4.
5. Countrywide admits that the Sheets made monthly payments required on the note  
through April of 2009. Countrywide is without knowledge or information necessary to ascertain  
the truth or veracity of the remaining allegations contained in paragraph 5 and they are therefore  
denied.
6. Countrywide admits that the Sheets applied for a refinance loan in 2009.  
Countrywide denies that it is the same company as Bank of America Home Loans, Inc. The  
companies are separate entities. Countrywide is without knowledge or information necessary to

ascertain the truth or veracity of the remaining allegations contained in paragraph 6 and they are therefore denied.

7. Countrywide is without knowledge or information necessary to ascertain the truth or veracity of the allegations contained in paragraph 7 and they are therefore denied.

8. Countrywide is without knowledge or information necessary to ascertain the truth or veracity of the allegations contained in paragraph 8 and they are therefore denied.

9. Countrywide is without knowledge or information necessary to ascertain the truth or veracity of the allegations contained in paragraph 9 and they are therefore denied.

10. Countrywide admits that the refinance loan did not close in November of 2009. Countrywide is without knowledge or information necessary to ascertain the truth or veracity of the remaining allegations contained in paragraph 10 and they are therefore denied.

11. Countrywide denies the allegations set forth in paragraph 11.

11. [The Amended Counterclaims contain two paragraph no. 11] Countrywide admits that it erroneously recorded a reconveyance of the property. Countrywide is without knowledge or information necessary to ascertain the truth or veracity of the remaining allegations contained in paragraph 11 and they are therefore denied.

12. Countrywide denies the allegations set forth at paragraph 12.

13. Countrywide is without knowledge or information necessary to ascertain the truth or veracity of the allegations contained in paragraph 13 and they are therefore denied.

14. Paragraph 14 does not appear to contain a statement of fact to which a responsive pleading is required. Rather, it appears to inappropriately attempt to state a motion to compel. The Court denied Plaintiff's Motion to Compel regarding these issues on To the extent that paragraph 14 contains an averment of fact, it is denied.

**ANSWER TO FIRST CLAIM FOR RELIEF – BREACH OF CONTRACT**

15. Countrywide incorporates all other paragraphs of this answer as if fully set forth herein.

16. Countrywide denies the allegations set forth at paragraph 16.

17. Countrywide denies the allegations set forth at paragraph 17.

**ANSWER TO SECOND CLAIM FOR RELIEF – IDAHO CONSUMER PROTECTION**

**ACT**

18. Countrywide incorporates all other paragraphs of this answer as if fully set forth herein.

19. Countrywide denies the allegations set forth at paragraph 19.

**ANSWER TO THIRD CLAIM FOR RELIEF – VIOLATION OF THE IDAHO**

**CONSUMER PROTECTION ACT**

20. Countrywide incorporates all other paragraphs of this answer as if fully set forth herein.

21. Countrywide denies the allegations set forth in paragraph 21.

**ANSWER TO FOURTH CLAIM FOR RELIEF – VIOLATION OF THE FAIR CREDIT**

**REPORTING ACT**

22. Countrywide incorporates all other paragraphs of this answer as if fully set forth herein.

23. Countrywide denies the allegations set forth at paragraph 23.

**ANSWER TO FIFTH CLAIM FOR RELIEF – SLANDER OF CREDIT**

24. Countrywide incorporates all other paragraphs of this answer as if fully set forth herein.

25. Countrywide denies the allegations set forth at paragraph 25.

**ANSWER TO SEVENTH CLAIM FOR RELIEF – FRAUD IN THE INDUCEMENT**

26. Countrywide incorporates all other paragraphs of this answer as if fully set forth herein.

27. Defendants' counter claims under the FDCPA were dismissed by order of the Court August 2, 2011. To the extent that the allegations set forth in this paragraph nonetheless require an answer, Countrywide denies the allegations set forth at paragraph 28.

28. Countrywide denies all averments of fact not specifically admitted herein.

**AFFIRMATIVE DEFENSES**

Countrywide states the following affirmative defenses to defendants' counterclaims:

**First Affirmative Defense**

Defendants fail to state a claim upon which relief can be granted.

**Second Affirmative Defense**

Defendant's claims regarding the refinance are barred because they have failed to name the party with whom they allege they applied for a mortgage loan refinance.

**Third Affirmative Defense**

Defendants' claims are barred because they fraudulently induced Bank of America to proceed with a loan application by, *inter alia*, misrepresenting information about the value of the collateral during the application process.

**Fourth Affirmative Defense**

Defendants' claims are barred by their failure to mitigate their alleged damages.

Fifth Affirmative Defense

Defendants' equitable claims (to the extent they attempt to assert equitable claims) may be barred by the doctrines of waiver, estoppel and unclean hands.

Sixth Affirmative Defense

Defendants' claims are barred as they arise as a consequence of their own negligence.

Seventh Affirmative Defense

Defendants' claims may be barred by various statutes of frauds.

Eighth Affirmative Defense

Defendants' claims sounding in tort are barred by the economic loss doctrine.

Ninth Affirmative Defense

Defendants' claims sounding in contract are barred and/or limited by their prior and anticipatory breaches. Countrywide's performance is excused by the prior breach by Defendants.

Tenth Affirmative Defense

Defendants' contract claims are barred by mutual mistakes.

Eleventh Affirmative Defense

Defendants' claims under the Idaho Consumer Protection Act are barred because the conduct complained of occurred in the context of a single transaction.

Countrywide reserves the right to plead additional affirmative defenses as they become known.

WHEREFORE, Plaintiff Countrywide Home Loan, Inc., respectfully requests the Court enter judgment in its favor on all counterclaims asserted, and for costs and attorney fees, and for any other relief the Court deems just and appropriate under the circumstances.

DATED This 3 <sup>November</sup> day of ~~October~~, 2011.


O'NEILL LAW, PLLC

By: Derrick J. O'Neill, Of the Firm  
Attorneys for PlaintiffCERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3 day of <sup>November</sup>~~October~~, 2011, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

John Curtis Hucks  
Attorney at Law  
PO Box 737  
New Meadows, ID 83654

☐ US Mail  
☒ Facsimile (208) 347-4128  
☒ E-Mail

  
Derrick J. O'Neill



FILED

NOV 30 2011 4:50 PM

SHERRY WARD, CLERK

*Sherry Ward*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS,  
INC.,

Plaintiff,

vs.

Case No. CV10-2564

RALPH E. SHEETS, JR. and DEBRA  
SHEETS; and DOES 1-10 as individuals  
with an interest in the property legally  
described as:

MEMORANDUM DECISION AND ORDER  
ON PLAINTIFF'S JULY 18, 2011 MOTION  
FOR JUDGMENT ON THE PLEADINGS

Township 22 North, Range 1 East, Boise  
Meridian, Adams County, Idaho  
Section 16: A parcel of land in the  
NE1/4NE1/4 lying Westerly of the  
Westerly line of the right-of-way of U.S.  
Highway 95, as it existed in 1977  
EXCEPTING THEREFROM the  
following parcel:

Commencing at a point on the south line  
of the NE1/4NE1/4 as intersected by the  
West line of U.S. Highway 95 (as  
established in 1953), the REAL POINT  
OF BEGINNING;

Thence Northeasterly along the West line  
of said Highway 550 feet;  
Thence West and parallel to the South  
line of the NE1/4NE1/4 550 feet;  
Thence Southeasterly and parallel to the

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West line of said Highway 550 feet to the )  
South line of the NE1/4NE1/4; )  
Thence along said South line 550 feet to )  
the REAL POINT OF BEGINNING. )

Which may commonly be known as: )  
5603 Highway 95, New Meadows, Idaho, )  
83654, )

Defendants. )  
\_\_\_\_\_ )

### **Procedural History**

The relevant procedural history of this motion through June 3, 2011 is as set forth in the court's Order filed August 2, 2011 plus the following. On July 18, 2011, Plaintiff Countrywide filed a Motion for Judgment on the Pleadings. The Sheets filed a Response to Motion for Judgment on the Pleadings on July 29, 2011. On August 5, 2011, a motion hearing was held and the parties asked the court reset the hearing on the pending motion until October 7, 2011 while they attempted to resolve this action through mediation. On October 7, 2011, the court heard oral argument on the motion. On November 30, 2011 the court held a telephonic status conference. Derrick O'Neill appeared on behalf of Countrywide and John Curtis Hucks appeared with and on behalf of the defendants, Ralph and Debra Sheets during the October 7, 2011 hearing. Derrick O'Neill participated on behalf of Countrywide and John Curtis Hucks participated on behalf of Ralph and Debra Sheets during the November 30, 2011 telephonic hearing.

### **Analysis**

Countrywide moves for a judgment on the pleadings pursuant to Idaho Rule of Civil Procedure 12(c). Countrywide has argued that it is undisputed that the deed of reconveyance was recorded in error and that the Sheets have admitted as much through their own pleadings.

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The Sheets oppose the motion arguing that because Countrywide's Complaint is based solely in equity that there are inherent issues of fact that may not be resolved by such a dispositive motion.

Idaho Rule of Civil Procedure 12(c) provides that "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." A court considering such a motion should not consider any matter outside of the pleadings unless the motion is converted to a motion for summary judgment and the parties given the opportunity to present their evidence in accordance with Idaho Rule of Civil Procedure 56. IRCP 12(c).

A judgment on the pleadings is reviewed with the same standard as a motion for summary judgment, and may be granted when the pleadings provide no genuine issue of material fact. *State v. Yzaguirre*, 144 Idaho 471, 163 P.3d 1183 (2007). In a motion for judgment on the pleadings, the moving party admits all the allegations of the opposing party's pleadings and also admits the untruth of its own allegations to the extent they have been denied. *Id.* See also *Trimble v. Engelking*, 130 Idaho 300, 939 P.2d 1379 (1997).

The allegations in Countrywide's Complaint, filed on March 20, 2010, are essentially that Countrywide is the beneficiary under a promissory note and deed of trust secured by real property in Adams County executed by Ralph Sheets and recorded as Adams County Instrument No. 107860. On November 9, 2009, Countrywide, due to mistake, inadvertence, or error, recorded a deed of reconveyance for the Sheets' real property that was recorded as Adams County Instrument No. 119343. Countrywide asserts this was in error because the Sheet were only entitled to a deed of reconveyance upon full satisfaction of the sums due and owing under the promissory note and that the Sheets had not fulfilled, at that time, the obligations due pursuant to the promissory note. Countrywide asks for relief from the deed of reconveyance by

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requesting that the court rescind the deed of reconveyance as well as asking the court to reinstate the original deed of trust. This is Countrywide's sole cause of action.

On June 21, 2010, the Sheets filed an Answer to Complaint and Demand for Jury Trial. In the Answer, the Sheets admit to executing the promissory note and deed of trust secured by the real property at issue but denies the remainder of the facts and claims asserted in the Complaint. The Sheets also assert a number of affirmative defenses. On January 3, 2011, the Sheets filed a Counterclaim and Demand for Jury Trial asserting claims for Breach of Contract, Violation of the Idaho Consumer Protection Act, Violation of the Federal Truth in Lending Act, Violation of the Fair Debt Collection Practices Act, Violation of the Federal Fair Credit Reporting Act, Slander of Credit and Fraud in the Inducement.<sup>1</sup> In their factual allegations, the Sheets assert that they obtained a residential mortgage loan from Countrywide in 2004 and executed the Promissory Note and Deed of Trust as discussed above. The Sheets assert that between December 2004 and April 2009 payments were made in performance of their obligations under the Promissory Note and Deed of Trust. The Sheets then assert that in April 2009 they applied for refinancing of their loan and that the process of getting the refinanced loan approved took several months. In November 2009, the Sheets assert that they were presented with proposed closing documents but when they met with the closing agent they were unable to finalize the closing because the closing agent would not allow the transaction to be completed.

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<sup>1</sup> In the Order on Motion to Dismiss Counterclaims, the court granted Countrywide's motion to dismiss the Violation of the Federal Truth in Lending Act claim, the Violation of the Fair Debt Collection Practices Act claim, and the Fraud in the Inducement claim.

Thereafter, Countrywide reconveyed the original deed of trust but the Sheets assert that they had no knowledge of this action and continued to make payments on the original loan. In support of their counterclaims, the Sheets then assert that Countrywide reported to credit reporting agencies that both the original 2004 loan and the failed 2009 refinanced loan were in full effect and in default and that Sheets has been unable to resolve this issue with Countrywide.

Unfortunately, even though each party has vigorously argued their client's respective positions, neither has provided this court with meaningful statutory or case authority supporting their respective positions. It is troubling to this court that the Plaintiff asks the court to rescind an alleged instrument recording error and reinstate a released deed of trust, but is unable to cite to the court, the court's authority to enter such an order which is the very basis of its' lawsuit. It is likewise troubling that the Defendants suggest that this court has no authority to enter an order correcting this alleged unilateral mistake. Inherent within that position is the implication that the Defendants are entitled to a windfall because of an alleged mistake made by some as of yet unidentified person or entity. The vague pleadings of the parties and their unsupported arguments provide the court with little help on this issue.

The court's own review of the Idaho Code suggests that the court may have authority to address this issue pursuant to the following statutes:

1. Idaho Code 10-1201 et. seq. authorizing this court to enter Declaratory Judgments.
2. Idaho Code 6-401 et. seq. authorizing this court to address adverse interests in real estate pursuant to a quiet title proceeding.
3. Idaho Code 55-726 authorizing this court to consider actions in district court against the proper parties to obtain a judgment proving an instrument.

There may be other statutory provisions that provide a basis for the Plaintiff's cause of action. On November 30, 2011 this court offered the parties an opportunity to provide further memoranda regarding the court's consideration of Plaintiff motion within the context of the above cited Idaho Code provisions. Both parties declined. The Plaintiff's complaint at the very least appears to request that the court enter a declaratory judgment, even though not specifically referred to as such.

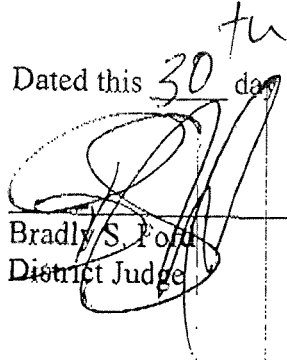
During their arguments, the parties made generalized references to facts not necessarily set forth in the language of the undisputed pleadings. Since this is a IRCP 12(c) motion, the court has not considered any factual allegation alluded to by either party which does not specifically fall within the four corners of the language of undisputed pleadings being considered.

The relevant pleadings crucial to the court's decision on this motion are contained in paragraph 6 and 7 of the Plaintiff's complaint, paragraph 7 and 8 of Defendant's answer and paragraph 11 of Defendant's counterclaim. The undisputed pleadings allege that the Defendant's executed a promissory note secured by deed of trust and recorded in the manner set forth in paragraph 6 of Plaintiff's complaint and that the Plaintiff "unilaterally executed and recorded a reconveyance" of the deed of trust in question sometime after November 2009. The Defendant's pleadings do not admit or acknowledge that the reconveyance was recorded through mistake, inadvertence or error. Therefore, based on this record, the court cannot grant the IRCP 12(c) relief requested in Plaintiff's July 18, 2011 Motion for Judgment on the Pleadings. The court does not need to address the Defendant's competing equitable relief argument because a literal reading of the parties' pleadings precludes the entry of the requested relief pursuant to IRCP 12(c).

Conclusion and Order

For the reasons set forth above, the Plaintiff's July 18, 2011 Motion for Judgment on the Pleadings is denied.

Dated this <sup>th</sup> 30 day of November, 2011.

  
Bradley S. Ford  
District Judge

## CERTIFICATE OF SERVICE

The undersigned certifies that on 30 day of November, 2011, s/he served a true and correct copy of the original of the foregoing on the following individuals in the manner described:

- upon counsel for plaintiff:

Derrick J. O'Neill  
Attorney at Law  
300 Main Street, Ste. 150  
Boise, Idaho 83702 Fax 208-854-3998

Eric R. Coakley  
Attorney at Law  
410 17<sup>th</sup> Street, Ste. 2400  
Denver, Colorado 80202 Fax 303-534-1313


- upon counsel for defendant:

John Curtis Hicks  
Attorney at Law  
P.O. Box 737  
New Meadows, Idaho 83654 email

and/or when s/he deposited each a copy of the foregoing ORDER in the U.S. Mail with sufficient postage to individuals at the addresses listed above.

SHERRY WARD. Clerk of the Court

By:

  
Deputy Clerk of the Court



FILED

APR - 2 2012 3:45 pm

SHERRY WARD, CLERK

*Sherry Ward*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiffs/Counter-defendant,

v.

RALPH SHEETS, JR. and DEBRA  
SHEETS, et al,

Defendants/Counterclaimants.

Case No. CV-2010-2564

**ORDER ON COUNTRYWIDE'S  
MOTION TO COMPEL AND SHEETS'  
MOTION FOR JOINDER AND  
CONFIRMATION**

**Procedural History**

On January 31, 2012 the Defendants/Counterclaimants Ralph and Debra Sheets filed a Motion for Confirmation and Joinder of Real Parties in Interest Pursuant to IRCP 17(a) and a Memorandum in Support of that motion. On February 7, 2012, Plaintiff Countrywide filed a Motion to Compel supported by the Affidavit of Derrick O'Neill. On February 14, 2012, Sheets filed the Affidavit of John Hucks in Opposition to Motion to Compel. On February 17, 2012, Countrywide filed a Response to Motion for Confirmation or Joinder of Real Parties in Interest. Oral argument was held in Canyon County on February 21, 2012. Derrick O'Neill appeared on

behalf of Countrywide and John Hucks appeared on behalf of Sheets. The court scheduled an oral ruling for April 6, 2012 but this written decision serves as the order of the court on the pending motions.

**Motion to Compel Depositions**

In Countrywide's Motion to Compel, it seeks an order compelling the Sheets to attend depositions within fourteen (14) days. The Sheets oppose the motion at this time. The Sheets argue that they would like to schedule depositions on consecutive days and that they cannot do so until Countrywide makes certain individuals available. The Sheets have not filed any motions related to their claim or objections to Countrywide's pending motion.

Idaho Rule of Civil Procedure 30(a) provides that "any party may take the testimony of any person, including a party, by deposition upon oral examination," and IRCP 30(b)(1) and (b)(2) provides the notice requirements and other requirements for securing the attendance of a party or person to be deposed.

The Affidavit of Derrick O'Neill filed on February 7, 2012 in conjunction with the motion indicates that the Sheets were served with deposition notices on November 7, 2011 scheduling the depositions for November 30, 2011. The affidavit goes on to state that on November 29, 2011, counsel for Sheets informed Mr. O'Neill that he would not produce the Sheets for the scheduled depositions. The Affidavit of John Curtis Hucks filed on February 14, 2012 indicates that the delay in scheduling the depositions is directly related to outstanding discovery requests and the Sheets' request that depositions be scheduled on consecutive days.

Before this court, at this time, is Countrywide's motion to compel the Sheets to attend depositions and the court finds that Countrywide is entitled pursuant to the Idaho Rules of Civil

Procedure to pursue and conduct the depositions of the opposing party. The court has nothing before it to support a contrary finding. The court is aware of the parties' ongoing issues and dispute related to the corporate entities in this matter. However, there is not a pending motion from the Sheets and this court is not aware of any legal authority that a party must schedule depositions upon the conditions imposed by an opposing party, such as the condition that a party will not appear unless certain other deponents are simultaneously made available for a deposition. Sheets have not cited any legal authority supporting their assertion that they refuse to appear for a deposition unless the opposing party agrees to be available for a simultaneous or consecutive deposition. Sheets have not filed a motion for a protective order nor have they noticed up depositions of Countrywide personnel which could be followed by their own motion to compel if necessary. Countrywide's Motion to Compel the deposition of the Sheets is granted and the Sheets are ordered to appear for depositions upon proper notice by Countrywide in accordance with the Idaho Rules of Civil Procedure. If the parties are unable to agree on a date, the matter will be submitted to the court and the court will set the date.

**Motion for Confirmation and Joinder of Real Parties in Interest**

The Sheets move for an order requiring the Plaintiff to confirm who the real parties in interest may be to this action, other than or in addition to Countrywide, and to join those parties as the real parties in interest to this action. In addition, Sheets asks the court for the opportunity to amend responsive pleadings once those parties have been added, to stay the discovery process until that has occurred, and to allow extended discovery once the real parties in interest have been identified. The Sheets believe that, based on the discovery conducted, that there are other entities that may be the real party(ies) in interest to this action. Plaintiff opposes the motion and argues that as to the claim asserted by the Plaintiff in the Complaint, that the proper party is

named, and that there is nothing to prevent the Sheets for amending their Counterclaim to add additional parties that they believe may have a role or interest in this action. The Plaintiff has represented to the court that it would not object to the Sheets amending their pleadings to add additional parties in light of the pending motion. The Sheets have not filed a motion to dismiss or asking the court to grant summary judgment based on their assertion that the Plaintiff is not the real party in interest. They have instead asked the court to order the Plaintiff to divulge an alternate real party in interest and join that entity as a Plaintiff in this action.

Idaho Rule of Civil Procedure 17(a) states that "[e]very action shall be prosecuted in the name of the real party in interest. An executor, administrator, personal representative, guardian, conservator, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in this capacity without joining the party for whose benefit the action is brought..." I.R.C.P. 17(a). It has been held that "[a] real party in interest is the person who will be entitled to the benefits of the action if successful, one who is actually and substantially interested in the subject matter." *Taylor v. Maile*, 142 Idaho 253, 257-58, 127 P.3d 156, 160-61 (2005). Generally, the holder of legal title to the subject matter of a cause of action is a real party in interest. Legal title is defined as "title that evidences apparent ownership but does not necessarily signify full and complete title or a beneficial interest." *Citibank (S. Dakota), N.A. v. Carroll*, 148 Idaho 254, 257-58, 220 P.3d 1073, 1076-77 (2009).

In the Complaint filed on March 30, 2010, Countrywide asserts that it is the beneficiary under a deed of trust executed by the Sheets and recorded as Adams County Instrument No. 107860. That deed of trust is attached to the Complaint at Exhibit A. The face of that document lists Mortgage Electronic Registration Systems, Inc. (MERS) as the beneficiary. The Note and

the Deed of Trust list America's Wholesale Lender as the lender to the transaction. Attached at Exhibit B is the Full Reconveyance Deed, recorded as Adams County Instrument No. 119343, which lists as the Trustee Recon Trust Company. The Sheets are correct that Countrywide does not appear as an interested party on the Note, the Deed of Trust, or the Full Reconveyance deed. However, this court must take Countrywide's assertion that it is the real party in interest as true because IRCP 17(a) contemplates that a party may sue on behalf of another party in certain circumstances and this court is not privy to the relationship between MERS and Countrywide or the other entities that have been named in the above mentioned documents. This court can find no grounds upon which it can force Countrywide to join additional parties. The court would hope that if Countrywide decides as a matter of course that it is not the sole party in interest, or that the interests of judicial economy would be served by the inclusion of an additional named Plaintiff that Countrywide would make whatever corrections it deems necessary. The court is fully aware of the changing nature of the Bank of America entity and its related entities and the issues that this has caused not only in this litigation but nationwide. Countrywide is encouraged to consider the interests of judicial economy when dealing with the Sheets and the ongoing discovery issues as it relates to various entities. Countrywide faces the possibility of dismissal of their cause of action based on their failure to establish that they are the real party in issue at trial.

In addition, the court agrees with the Sheets that the record of this action is somewhat confusing because of the number of entities named in the documents before the court, none of which appear to be Countrywide in its named capacity. However, the court also notes that many of the allegations of the Sheets against Countrywide and related Bank of America entities are made through the Sheets' counterclaims and thus, the Sheets are in the position of amending those counterclaims to include the entities against which the various claims are asserted. The

court notes that Countrywide has represented to the court that it would not oppose further amendment of the Sheets' counterclaims in order for the Sheets to add additional parties and entities that may be subject to the claims of the Sheets. To that extent, the court would encourage the Sheets to timely identify the entities at issue and to seek the proper amendment in order for this litigation to move forward.

To that extent, and consistent with the above analysis, the court denies the Sheets' Motion for Confirmation and Joinder of Real Parties in Interest.

**Conclusion and Order**

For the reasons set forth above, the Plaintiff/Counter-defendants' Motion to Compel is granted. The Defendant /Counterclaimants Motion for Joinder and Confirmation is denied. Any request for an award of costs and attorney fees shall be submitted in compliance with Idaho Statute, Rule and/or case authority.

Dated this <sup>2<sup>nd</sup></sup> day of April 2012

  
BRADLY S. FORD  
DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that on 2 day of <sup>April</sup> ~~March~~, 2012, s/he served a true and correct copy of the original of the foregoing ORDER on the following individuals in the manner described:

- upon counsel for plaintiff/counter-defendant,

Derrick J. O'Neill  
Attorney at Law  
300 Main Street, Ste. 150  
Boise, Idaho 83702

FAX 208-854-3448

Eric R. Coakley  
Attorney at Law  
410 17<sup>th</sup> Street, Ste. 2400  
Denver, Colorado 80202

FAX 303-534-1313

- upon counsel for defendant/counterclaimant,

John Curtis Hucks  
Attorney at Law  
P.O. Box 737  
New Meadows, Idaho 83654

email

and/or when s/he deposited each a copy of the foregoing ORDER in the U.S. Mail with sufficient postage to individuals at the addresses listed above or by personal service or alternative service set forth below:

SHERRY WARD, Clerk of the Court

By:

  
Deputy Clerk of the Court

JOHN CURTIS HUCKS  
ATTORNEY AT LAW, P.C.  
P.O. Box 737  
New Meadows, ID 83654  
Tel: (208) 347-4128; Facsimile: (208) 347-4128  
huckslaw@yahoo.com  
ISB No. 6473  
Attorney for Defendants/Counterclaimants

FILED

APR 18 2012 2:00 PM

SHERRY WARD, CLERK

*John Hucks*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA SHEETS,  
and DOES

Defendants,

---

RALPH E. SHEETS, JR. and DEBRA SHEETS,

Counterclaimants,

vs.

COUNTRYWIDE HOME LOANS, INC.,

Counterdefendant,

and

BANK OF AMERICA, N.A., successor by  
merger and name change to BAC HOME  
LOANS, INC., f/k/a COUNTRYWIDE HOME  
LOANS, INC., and BAC HOME LOAN  
SERVICING, L.P, f/k/a COUNTRYWIDE  
HOME LOAN SERVICING, LP; and  
RECONTRUST COMPANY, N.A.,

Third Party Defendants,

Case No. CV-2010-2564

**DEFENDANTS' AMENDED  
ANSWER, SECOND AMENDED  
COUNTERCLAIMS, THIRD PARTY  
COMPLAINT, AND DEMAND FOR  
JURY TRIAL**

**DEFENDANTS' AMENDED ANSWER, SECOND AMENDED COUNTERCLAIMS,  
THIRD PARTY COMPLAINT, AND DEMAND FOR JURY TRIAL**



COMES NOW Defendants and Counterclaimants, Ralph E. Sheets, Jr. and Debra Sheets (hereinafter "Sheets") by and through their attorney of record John Curtis Hucks, Attorney at Law, P.C., and for their Amended Answer, Second Amended Counterclaims, Third Party Complaint, And Demand For Jury Trial against Countrywide Home Loans, Inc. (hereinafter "Countrywide"); and Bank Of America, N.A., successor by merger successor by merger and name change to BAC Home Loans, Inc., f/k/a Countrywide Home Loans, Inc., and BAC Home Loan Servicing, L.P, f/k/a Countrywide Home Loan Servicing, LP; (hereinafter collectively "Bank of America"); and ReconTrust Company, N.A., (hereinafter "ReconTrust") and state and allege as follows.

**ANSWER**

In response to each particular allegation of the Plaintiff's Complaint, Sheets admit and deny as follows. To the extent that any particular allegation of the Plaintiff's Complaint is neither specifically admitted nor specifically denied, said allegation shall be deemed denied.

1. In response to paragraph 1 of the Plaintiff's Complaint, Sheets admit entering into the deed of trust described therein, but are without knowledge as to whether Countrywide is the current beneficiary under said instrument.

2. Sheets admit the allegations contained in paragraph 2 of the Plaintiff's Complaint.

3. Sheets admit the allegations contained in Paragraph 3 of the Plaintiff's Complaint.

4. Sheets admit the allegations contained in paragraph 4 of the Plaintiff's Complaint.

5. Sheets restate and incorporate their responses to paragraphs 1 thru 4, as stated above.

6. Sheets admit the allegations contained in paragraph 6 of the Plaintiff's Complaint.

7. Sheets are without sufficient knowledge as to the allegations of paragraph 7 of the Plaintiff's Complaint, and as such, all allegations contained therein are denied.

8. For the reasons set forth in Defendants' Affirmative Defenses set forth below, all of the allegations set forth in paragraph 8 of Plaintiff's Complaint are denied.

9. For the reasons set forth in Defendants' Affirmative Defenses set forth below, all of the allegations set forth in paragraph 9 of Plaintiff's Complaint are denied.

10. For the reasons set forth in Defendants' Affirmative Defenses set forth below, all of the allegations set forth in paragraph 10 of Plaintiff's Complaint are denied.

11. For the reasons set forth in Defendants' Affirmative Defenses set forth below, all of the allegations set forth in paragraph 11 of Plaintiff's Complaint are denied.

### **AFFIRMATIVE DEFENSES**

#### **First Defense**

Plaintiff's Complaint and each claim and/or cause of action contained therein **fails to state a claim upon which relief can be granted** and the Complaint should be dismissed with prejudice.

#### **Second Defense**

The named Plaintiff is not the real party in interest, as required by Rule 17(a) IRCP, and as such, such Complaint should be dismissed with prejudice, or alternatively, Plaintiff should be required to bring suit in the name of the real party in interest.

### **Third Defense**

Plaintiff, either directly or through its successors in interest, has engaged in conduct in **violation of the Idaho Consumer Protection Act, Title 48, Chapter 6, Idaho Code**, resulting in financial damages to Sheets equal to or in excess of the amounts claimed by Plaintiff pursuant to the deed of trust and underlying promissory note, and as a result, Plaintiff's Complaint should be dismissed with prejudice.

### **Fourth Defense**

Plaintiff, either directly or through its successors in interest, has engaged in conduct in **violation of the federal Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq.**, resulting in financial damages to Sheets equal to or in excess of the amounts claimed by Plaintiff pursuant to the deed of trust and underlying promissory note, and as a result, Plaintiff's Complaint should be dismissed with prejudice.

### **Fifth Defense**

Plaintiff, either directly or through its successors in interest, has engaged in conduct in **violation of the federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq.**, resulting in financial damages to Sheets equal to or in excess of the amounts claimed by Plaintiff pursuant to the deed of trust and underlying promissory note, and as a result, Plaintiff's Complaint should be dismissed with prejudice.

### **Sixth Defense**

Plaintiff, either directly or through its successors in interest, has engaged in conduct which constitutes **slander of credit**, resulting in financial damages to Sheets equal to or in

excess of the amounts claimed by Plaintiff pursuant to the deed of trust and underlying promissory note, and as a result, Plaintiff's Complaint should be dismissed with prejudice.

#### **Seventh Defense**

Plaintiff, either directly or through its successors in interest, has **engaged in negligent and commercially unreasonable conduct** in connection with the attempted refinancing of Sheets' personal residence, resulting in financial damages to Sheets equal to or in excess of the amounts claimed by Plaintiff pursuant to the deed of trust and underlying promissory note, and as a result, Plaintiff's Complaint should be dismissed with prejudice.

#### **Eighth Defense**

Plaintiff, either directly or through its successors in interest, has engaged in negligent and commercially unreasonable conduct, which conduct constitutes **unclean hands**, resulting in financial damages to Sheets equal to or in excess of the amounts claimed by Plaintiff pursuant to the deed of trust and underlying promissory note, and as a result, Plaintiff has either **waived** or is **equitably estopped** from seeking the relief demanded in its Complaint.

#### **Ninth Defense**

Plaintiff, either directly or through its successors in interest, has engaged in negligent and commercially unreasonable conduct, resulting in a **right of set-off** in favor of Sheets equal to or in excess of the amounts claimed by Plaintiff pursuant to the deed of trust and underlying promissory note, and as a result, Plaintiff's Complaint should be dismissed with prejudice.

#### **Tenth Defense**

The Plaintiff's Complaint, and all claims and/or causes of action contained therein may be barred, in whole or in part, due to the **failure of the Plaintiff to mitigate its damages**, if any,

and the Plaintiff is therefore barred from the relief demanded in its Complaint.

### **Eleventh Defense**

To the extent that the reconveyance and cancellation of record of the deed of trust purportedly owned by Plaintiff was the result of mistake, **such mistake was a unilateral mistake caused solely by the negligence of Plaintiff**, and not caused by any actions of Sheets. Accordingly, Plaintiff should be denied the relief demanded in its Complaint.

### **COUNTERCLAIM AND THIRD PARTY COMPLAINT**

Defendants, Sheets, bring this Counterclaim and Third Party Complaint against Countrywide Home Loans, Inc. (hereinafter "Countrywide"); Bank Of America, N.A., successor by merger and name change to BAC Home Loans, Inc., f/k/a Countrywide Home Loans, Inc., and BAC Home Loan Servicing, L.P, f/k/a Countrywide Home Loan Servicing, LP; (hereinafter collectively "Bank of America"); and ReconTrust Company, N.A., (hereinafter "ReconTrust"), and state and allege as follows.

### **JURISDICTION AND VENUE**

1. Sheets are residents of Adams County, Idaho and own real property in said county that is the subject of this action.
2. This Counterclaim and Third Party Complaint arises from the same series of transactions as the Complaint filed by Countrywide.
3. Bank of America, N.A. is a nationally chartered bank and the successor by merger and name change to BAC Home Loans, Inc., f/k/a Countrywide Home Loans, Inc., and BAC Home Loan Servicing, L.P, f/k/a Countrywide Home Loan Servicing, LP.

4. ReconTrust Company, N.A. ("ReconTrust") is a for-profit business entity permitted by the U.S. Office of the Comptroller of the Currency as a limited purpose national trust bank. It is a California corporation and is a wholly owned subsidiary of Bank of America, N.A. Upon Information and belief, Recon Trust does not perform trustee services for any entities other than Bank of America and related entities thereof.

5. In reality, Bank of America, N.A. is the real party in interest as to all matters which are the subject of the Complaint and this Counterclaim and Third Party Complaint

6. The website of the Idaho Secretary of State does not reflect a current registration by either Bank of America, N.A. or ReconTrust to do business in the State of Idaho, nor does such website reflect a registered office or agents within the State of Idaho for either named entity.

7. This Court has personal and subject matter jurisdiction over this matter and the parties thereto, and venue is proper in the county of Adams, State of Idaho.

#### **ALLEGATIONS COMMON TO ALL COUNTS**

8. Counterclaimants incorporate by reference General Allegations 1 through 7 above, as if fully restated herein.

9. On or about December 21, 2004, Sheets obtained a residential mortgage loan (hereinafter the "2004 Loan") from Countrywide Home Loans, Inc., d/b/a America's Wholesale Lender (hereinafter "Countrywide") for property owned and occupied by Sheets in Adams County, Idaho. The loan was represented by a Note and Deed of Trust dated December 21, 2004 and the Deed of Trust was recorded on December 28, 2004 as Instrument #107860, Official Records of Adams County, Idaho. A true copy of the Note and Deed of Trust were previously

attached to Countrywide's Complaint in this matter as Exhibit "A", and said documents are hereby incorporated by reference.

10. Between December 2004 and April 2009, Sheets paid all amounts due under the Note and performed all other obligations under the 2004 Loan.

11. Effective April 2009, Countrywide Home Loans, Inc., pursuant to a previous merger between its parent company Countrywide Financial, Inc. and Bank of America, N.A., changed its name to BAC Home Loans, Inc. (hereinafter "Bank of America"). On April 28, 2009, Sheets applied over the telephone to Bank of America for refinancing of their residence, and at that time paid a \$400 application fee. An actual written application was thereafter mailed to Sheets and returned to Bank of America by Sheets approximately one week later.

12. At the time of said application, Bank of America had full control, possession, and access to all books and records of Countrywide Home Loans, Inc. relating to the 2004 Loan to Sheets referenced herein, including the fact that the improvements on the real property owned and occupied by Sheets consisted of a permanently attached manufactured home and other improvements. At the time of application, Sheets was fully current under the terms of the 2004 Loan.

13. As part of the refinancing process, Sheets provided in a timely and accurate manner all information requested by Bank of America, including financial information and other requested information regarding the subject real property. In addition to submitting written information as requested, Sheets had multiple telephone calls with loan representatives of Bank of America, specifically with Paul Campbell, who was located in the Dallas-Fort Worth office of Bank of America. During those telephone calls, Mr. Campbell made numerous representations

regarding the terms and conditions of the pending loan application, upon which representations Sheets reasonably relied. Specifically, Mr. Campbell advised Sheets that he was eligible for a loan based on 80% of the determined appraised value of the subject property.

14. During each of the telephone calls, Sheets was advised that said calls were being recorded and preserved, and Sheets reasonably relied upon those representations.

15. Despite the timely submission by Sheets of all information requested by Bank of America representatives; and despite the fact that bank records reflect that the loan application was approved as early as June 2009, and Sheets was told that the loan would close by the end of June, said application languished for over seven (7) months and was not scheduled for closing. During said period, Sheets and Mr. Campbell had numerous other telephone calls regarding the status of the application. During those calls Mr. Campbell offered various excuses for the delay in completing the loan process and also made express representations to Sheets regarding concessions and modifications to the loan terms that Bank of America would make in consideration for the delays. Sheets reasonably relied upon those representations, and believed that the telephone calls during which those representations were made were being recorded or otherwise preserved. In September 2009, Paul Campbell advised Sheets that the credit and financial information had to be resubmitted as it was more than 90 days old. At the time, Mr. Campbell represented to Sheets that there would be a reduction in the interest rate on the loan, due to the delays caused by Bank of America in processing and closing the loan application.

16. In October 2009, Sheets was contacted by telephone by an employee or agent of Bank of America, and instructed to meet with a mobile closing agent in order to close the loan. At such time, Sheets had not received final closing documents to review. Nonetheless, Sheets



agreed to meet with a loan closer (name unknown) retained by Bank of America to complete the closing of the loan. Ralph Sheets met the loan closer in Grangeville, Idaho on or about October 27, 2009, and was fully prepared to execute loan documentation at that time. However, the loan closer advised Sheets that the loan documentation she had been provided by Bank of America was inaccurate and refused to allow Sheets to either review or execute the documents. As a result, the loan documents tendered by Bank of America were not executed by Sheets, and the loan did not close. Upon returning home from the aborted closing, Sheets found proposed closing documents which had been sent via overnight delivery. However, the terms contained in said closing documents were different than the terms that had been represented by Paul Campbell. In addition, the amount of the proposed loan was less than had originally been offered to Sheets by Paul Campbell.

17. Following the failed October 2009 closing, Sheets continued to contact Bank of America representatives in an attempt to complete the transaction, but Bank of America's employees failed to respond to such inquiries in a timely manner. Sheets made the November 2009 payment which was not applied correctly and attempted to make the December 2009 payment but was blocked from the online banking ability to make any payment. Sheets also hired legal counsel to assist in said negotiations, but Bank of America would not communicate with said counsel without written permission from the Office of the Chairman of Bank of America Corporation. Representatives of Bank of America subsequently communicated with counsel for Sheets, but failed to follow through with solving the problems resulting from the unclosed 2009 Loan.

18. Following the failed closing in October 2009; on November 9, 2009, Countrywide

Home Loans, Inc., through its nominee Mortgage Electronic Registration Systems, Inc. ("MERS") caused to be recorded in the Official Records of Adams County, Idaho a Substitution of Trustee, whereby the original Trustee named in the 2004 Deed of Trust was replaced by ReconTrust Company, N.A., a wholly owned subsidiary of Bank of America.

19. Immediately following the recording of the Substitution of Trustee referenced above, on November 9, 2009, and solely through its own negligence, ReconTrust Company, Inc. caused to be recorded in the Official Records of Adams County, Idaho a Full Reconveyance of the 2004 Deed of Trust. However, because Sheets did not have immediate knowledge of said reconveyance, they continued to tender monthly payments under the 2004 Loan through December 2009.

20. Despite the recording of the reconveyance and cancellation of the 2004 Loan referenced above, various departments or agents of Bank of America have thereafter:

- a. erroneously and falsely reported to various credit reporting agencies that the canceled and recovered 2004 Loan was still in full effect and in default;
- b. failed to properly credit payments made by Sheets under the 2004 Loan;
- c. falsely listed on Sheets' online account statement that both the 2004 Loan and the never closed 2009 Loan were both in full force and effect.
- d. referred the 2004 Loan to ReconTrust for commencement of foreclosure proceedings.
- e. improperly forced-placed hazard insurance on the subject property at the expense of Sheets, despite the fact that Sheets has continuously maintained such insurance since the inception of the 2004 loan.

f. failed to correct erroneous credit reports made concerning the 2004 Loan, despite providing Sheets with written notice that such reports had been corrected.

g. erroneously reported to the Office of the Comptroller of the Currency that the 2004 Loan was the subject of foreclosure proceedings between January 1, 2009 and December 31, 2010.

21. On August 23, 2011, more than seventeen months after the initiation of the pending suit, MERS, at the direction of the current Trustee, ReconTrust, caused to be recorded in the Official Records of Adams County, Idaho a Corporation Assignment of Deed of Trust, which purports to assign and transfer to Bank of America, N.A. all beneficial interest in and to the 2004 Deed of Trust and underlying promissory note, even though prior correspondence from Bank of America had stated that the underlying promissory note was owned by a unit of the Federal National Mortgage Association (FNMA), and despite the fact that the Full Reconveyance recorded by ReconTrust on November 9, 2009 had certified that both the 2004 Deed of Trust and the underlying promissory note had been surrendered and canceled.

22. As successor in interest to the named Plaintiff, Bank of America, N.A. is liable for all actions previously taken by employees, agents and nominees of Countrywide Home Loans, Inc., Bank of America Home Loans, Inc., BAC Home Loan Servicing, LP, Countrywide Home Loan Servicing, LP, MERS, and other related departments or subsidiaries of Bank of America, N.A., as relates to matters and events described herein. Further, as parent company to ReconTrust, Bank of America, N.A. is vicariously liable for all actions taken by employees and agents of ReconTrust as relates to the matters and events described herein. Due to its control over all of the parties named as counterdefendant or third party defendants herein, Bank of America, N.A. is the real party in

interest as to all matters contained within the present case.

**COUNT ONE - BREACH OF CONTRACT BY BANK OF AMERICA, N.A.**

23. Sheets re-alleges and incorporates the allegations contained in Paragraphs 1 through 22 above as though fully set forth herein.

24. Pursuant to the terms of 9-505, Idaho Code, a written commitment to lend money is an enforceable agreement. Bank of America committed in writing to loan Sheets the sum of \$87,750.00, by approving the application for the 2009 Loan after review of the underlying application documentation. Bank of America further evidenced said approval by preparing and delivering proposed closing documents to Sheets and to a closing agent selected by Bank of America. Bank of America has further provided written documentation during the course of discovery in this matter confirming that all outstanding conditions for closing of the 2009 Loan had been met. The actions of Bank of America constitute confirmation of a commitment to lend money, and thus constitute an enforceable contract.

25. Based upon the foregoing conduct as set forth in this Counterclaim, Bank of America has breached the terms of the contractual agreements entered into between the parties, which breach proximately caused financial damages to Sheets equal to or in excess of the amounts claimed by Plaintiff pursuant to the 2004 deed of trust and underlying promissory note, in an amount to be established at the time of trial.

**COUNT TWO - DEMAND FOR SPECIFIC PERFORMANCE OF CONTRACT BY  
BANK OF AMERICA, N.A.**

26. Sheets re-alleges and incorporates the allegations contained in Paragraphs 1 through 22 above as though fully set forth herein.

**DEFENDANTS' AMENDED ANSWER, SECOND AMENDED COUNTERCLAIMS,  
THIRD PARTY COMPLAINT, AND DEMAND FOR JURY TRIAL**

27. By processing and approving the loan application made by Sheets in connections with the 2009 Loan, and proceeding with presentation of closing documents for said transaction, Bank of America created an enforceable agreement to lend Sheets money upon the terms agreed to between Sheets and representatives of Bank of America. Sheets is entitled to the equitable remedy of specific performance of said contractual agreement, after adjustment for damages suffered by Sheets due to Bank of America's breach of said contractual agreement.

**COUNT THREE - VIOLATION OF THE IDAHO CONSUMER PROTECTION ACT  
BY BANK OF AMERICA, N.A.**

28. Sheets re-alleges and incorporates the allegations contained in Paragraphs 1 through 22 above as though fully set forth herein.

29. Bank of America, through its agents and employees have engaged in conduct in violation of the Idaho Consumer Protection Act, Title 48, Chapter 6, Idaho Code, which conduct proximately caused financial damages to Sheets equal to or in excess of the amounts claimed by Plaintiff pursuant to the 2004 deed of trust and underlying promissory note, in an amount to be established at the time of trial.

**COUNT FOUR - VIOLATION OF THE FEDERAL FAIR CREDIT REPORTING ACT  
BY BANK OF AMERICA, N.A.**

30. Sheets re-alleges and incorporates the allegations contained in Paragraphs 1 through 22 above as though fully set forth herein.

31. Bank of America has provided false information to credit reporting agencies and engaged in conduct in violation of the federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq., which conduct proximately caused financial damages to Sheets equal to or

**DEFENDANTS' AMENDED ANSWER, SECOND AMENDED COUNTERCLAIMS,  
THIRD PARTY COMPLAINT, AND DEMAND FOR JURY TRIAL**

in excess of the amounts claimed by Plaintiff pursuant to the 2004 deed of trust and underlying promissory note, in an amount to be established at the time of trial.

**COUNT FIVE - SLANDER OF CREDIT BY BANK OF AMERICA, N.A.**

32. Sheets re-alleges and incorporates the allegations contained in Paragraphs 1 through 22 above as though fully set forth herein.

33. Bank of America has provided false information to third-party credit reporting agencies and to the Office of the Comptroller of the Currency, and has engaged in conduct which constitutes slander of credit, which conduct proximately caused financial damages to Sheets equal to or in excess of the amounts claimed by Plaintiff pursuant to the 2004 deed of trust and underlying promissory note, in an amount to be established at the time of trial.

**COUNT FIVE - VIOLATION OF IDAHO CODE §45-1502 (1)  
BY BANK OF AMERICA, N.A. AND RECONTRUST N.A.**

34. Sheets re-alleges and incorporates the allegations contained in Paragraphs 1 through 22 above as though fully set forth herein.

35. The original trustee named in the 2004 deed of trust which is the subject of this action was Timberline Title and Escrow, Inc. (hereinafter "Timberline"). Timberline is an Idaho based title and escrow company, which meets all requirements set forth in Idaho Code §45-1501 et seq. for serving as a trustee under deeds of trust, and was not in any way affiliated with Plaintiff.

36. On November 9, 2009, Bank of America, through its nominee, MERS, executed and recorded a Substitution of Trustee (see paragraphs 18 and 19 above) wherein Timberline was replaced as trustee by ReconTrust, a wholly owned subsidiary of Bank of America.

37. Idaho Code §45-1502(1) expressly prohibits the trustee from being the same as the beneficiary under the deed of trust. The nominee beneficiary under the 2004 deed of trust is MERS. The person who executed both the Substitution of Trustee and the Full Reconveyance is listed as an officer of both MERS and ReconTrust. Essentially, Bank of America has attempted to change the role of trustee, which is intended to act independently on behalf of both the beneficiary and grantor under a deed of trust into a captive agent. Such action is in violation of §45-1502(1), and upon information and belief, Bank of America undertook such action to circumvent the intent of said statute.

38. As a result of Bank of America's willful violation of §45-1502, it is equitably ineligible to pursue correction or rescission of the unilateral mistake committed by ReconTrust in connection with the recording of the Full Reconveyance which is the subject of this action.

#### **DEMAND FOR JURY TRIAL**

39. Sheets re-alleges and incorporates the allegations contained in Paragraphs 1 through 22 above as though fully set forth herein.

40. Sheets hereby demands a trial by jury as to all issues properly so triable as set forth in this Counterclaim and Third Party Complaint.

#### **ATTORNEYS FEES**

41. Sheets re-alleges and incorporates the allegations contained in Paragraphs 1 through 22 above as though fully set forth herein.

42. Sheets has been required to obtain the services of legal counsel to assist them in preparation and prosecution of this Counterclaim and Third Party Complaint, as well as their defense against Plaintiff's Complaint.

WHEREFORE, after having asserted its Counterclaim and Third Party Complaint against Bank of America and ReconTrust, and asserting their right to trial by jury, Sheets hereby requests judgment and relief as follows:

1. That Plaintiff's Complaint and prayer for rescission of the Full Reconveyance be denied, and that the Complaint of Plaintiff be dismissed with prejudice.

2. That judgment be entered in favor of Sheets pursuant to their Counterclaim and Third Party Complaint in an amount to be established at trial.

3. That Sheets be awarded their attorneys fees, pursuant to pursuant to Idaho Rule of Civil Procedure 54, and Idaho Code §§ 12-120 and 12-121, in an amount to be determined by the Court.

4. That the court award to Sheets such additional and supplemental relief as to which the court deems just and appropriate under the circumstances.

DATED this 16<sup>th</sup> day of April, 2012.

John Curtis Hucks, Attorney at Law, P.C.

By   
John Curtis Hucks

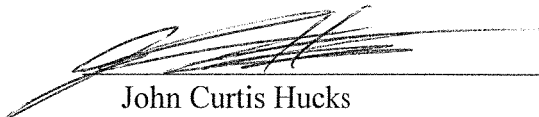


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the above document is being served via email attachment on April 16<sup>th</sup>, 2012 and U.S. Mail on April 17<sup>th</sup>, 2012 upon:

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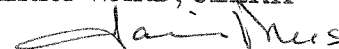
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**FILED**

MAY - 7 2012 8:30 AM

SHERRY WARD, CLERK



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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

v.

RALPH E. SHEETS, JR. and DEBRA  
SHEETS; and DOES

Defendants.

Case No. CV-2010-2564

**ANSWER TO PLAINTIFF'S SECOND  
AMENDED COUNTERCLAIMS AND  
THIRD PARTY COMPLAINT**

COMES NOW Plaintiff, Countrywide Home Loans, Inc. ("Countrywide"); and third party defendant Bank of America, N.A. ("BANA") (BANA is incorrectly identified in the third party claims as "BAC Home Loans Servicing, LP." BAC Home Loans Servicing, LP is now known as Bank of America, N.A.), and ReconTrust Company, N.A. ("ReconTrust") (Countrywide, BANA and ReconTrust are collectively referred to herein as the "Bank Parties");

**ANSWER TO ALLEGATIONS REGARDING JURISDICTION AND VENUE**

1. The Bank Parties are without knowledge or information necessary to ascertain the truth or veracity of the allegations contained in paragraph 1 and they are therefore denied.

2. The Bank Parties deny the allegations set forth at paragraph 2.

3. The Bank Parties admit the allegations contained in Paragraph 3.

4. The Bank Parties admit that ReconTrust, N.A. is a national bank located in California. The Bank Parties are without knowledge or information sufficient to form a belief as to the truth or veracity of the remainder of claims in this paragraph and they are therefore denied.

5. The Bank Parties deny the allegations of paragraph 5.

6. The Bank Parties are without knowledge or information necessary to ascertain the truth or veracity of the allegations contained in paragraph 6 and they are therefore denied.

7. The Bank Parties admit to the allegations regarding venue and jurisdiction.

**ANSWER TO ALLEGATIONS COMMON TO ALL COUNTS**

8. The Bank Parties incorporate all other paragraphs of this Answer as if fully set forth herein.

9. The Bank Parties admit the allegations in paragraph 9.

10. The Bank Parties admit that the Sheets made monthly payments required on the note through April of 2009.

11. The Bank Parties admit that the Sheets applied for a refinance loan in 2009 from Bank of America, N.A. The Bank Parties are without knowledge or information necessary to ascertain the truth or veracity of the remaining allegations contained in paragraph 11 and they are therefore denied.

12. The Bank Parties deny the allegations of paragraph 12.

13. The Bank Parties are without knowledge or information necessary to ascertain the truth or veracity of the allegations contained in paragraph 13 and they are therefore denied.

14. The Bank Parties are without knowledge or information necessary to ascertain the truth or veracity of the allegations contained in paragraph 14 and they are therefore denied.

15. The Bank Parties are without knowledge or information necessary to ascertain the truth or veracity of the allegations contained in paragraph 15 and they are therefore denied.

16. The Bank Parties admit that the refinance loan did not close. The Bank Parties are without knowledge or information necessary to ascertain the truth or veracity of the remaining allegations contained in paragraph 16 and they are therefore denied.

17. The Bank Parties admit that there was some communication between the parties during the referenced time period, but deny the remaining allegations of paragraph 17.

18. The Bank Parties admit the allegations of paragraph 18.

19. The Bank parties admit that Countrywide and ReconTrust erroneously recorded a reconveyance of the property. The Bank Parties are without knowledge or information necessary to ascertain the truth or veracity of the remaining allegations contained in paragraph 19 and they are therefore denied.

20. The Bank Parties deny the allegations of paragraph 20.

21. The Bank Parties admit MERS transferred all beneficial interest in the Deed of Trust to Bank of America, N.A. The Bank Parties are without knowledge or information necessary to ascertain the truth or veracity of the remaining allegations contained in paragraph 21 and they are therefore denied.

22. The Bank Parties deny the allegations in paragraph 22.

Countrywide is without knowledge or information necessary to ascertain the truth or veracity of the allegations contained in paragraph 22 and they are therefore denied.

**ANSWER TO FIRST CLAIM FOR RELIEF – BREACH OF CONTRACT BY BANK OF AMERICA, N.A.**

23. The Bank Parties incorporate all other paragraphs of this answer as if fully set forth herein.

24. The Bank Parties deny the allegations set forth at paragraph 24.

25. The Bank Parties deny the allegations set forth at paragraph 25.

**ANSWER TO SECOND CLAIM FOR RELIEF – DEMAND FOR SPECIFIC PERFORMANCE BY BANK OF AMERICA, N.A.**

26. The Bank Parties incorporate all other paragraphs of this answer as if fully set forth herein.

27. The Bank Parties deny the allegations set forth at paragraph 27.

**ANSWER TO THIRD CLAIM FOR RELIEF - VIOLATION OF THE IDAHO CONSUMER PROTECTION ACT BY BANK OF AMERICA, N.A.**

28. The Bank Parties incorporate all other paragraphs of this answer as if fully set forth herein.

29. The Bank Parties deny the allegations set forth at paragraph 29.

**ANSWER TO FOURTH CLAIM FOR RELIEF – VIOLATION OF THE FAIR CREDIT REPORTING ACT BY BANK OF AMERICA, N.A.**

30. The Bank Parties incorporate all other paragraphs of this answer as if fully set forth herein.

31. The Bank Parties deny the allegations set forth at paragraph 31.

**ANSWER TO FIFTH CLAIM FOR RELIEF – SLANDER OF CREDIT BY BANK OF AMERICA, N.A.**

32. The Bank Parties incorporate all other paragraphs of this answer as if fully set forth herein.

33. The Bank Parties deny the allegations set forth at paragraph 33.

**ANSWER TO SIXTH [INCORRECTLY NUMBERED FIVE] CLAIM FOR RELIEF -  
VIOLATION OF IDAHO CODE § 45-1502(1) BY BANK OF AMERICA, N.A. AND  
RECONTRUST N.A.**

34. The Bank Parties incorporate all other paragraphs of this answer as if fully set forth herein.

35. The Bank Parties deny the allegations set forth at paragraph 35.

36. The Bank Parties deny the allegations set forth at paragraph 36.

37. The Bank Parties deny the allegations set forth at paragraph 37.

38. The Bank Parties deny the allegations set forth at paragraph 38.

39. The Bank Parties deny any allegations not specifically admitted herein.

**AFFIRMATIVE DEFENSES**

The Bank Parties the following affirmative defenses to defendants' counterclaims:

**First Affirmative Defense**

Defendants fail to state a claim upon which relief can be granted.

**Second Affirmative Defense**

Defendants claims for violation of Idaho Code § 45-1502(1) are barred because that statute does not allow a private right of action.

**Third Affirmative Defense**

Defendants' claims are barred because they fraudulently induced Bank of America, N.A. to proceed with a loan application by, *inter alia*, misrepresenting information about the value of the collateral during the application process.

Fourth Affirmative Defense

Defendants' claims are barred by their failure to mitigate their alleged damages.

Fifth Affirmative Defense

Defendants' equitable claims (to the extent they attempt to assert equitable claims) may be barred by the doctrines of waiver, estoppel and unclean hands.

Sixth Affirmative Defense

Defendants' claims are barred as they arise as a consequence of their own negligence.

Seventh Affirmative Defense

Defendants' claims may be barred by various statutes of frauds.

Eighth Affirmative Defense

Defendants' claims sounding in tort are barred by the economic loss doctrine.

Ninth Affirmative Defense

Defendants' claims sounding in contract are barred and/or limited by their prior and anticipatory breaches. Countrywide's performance is excused by the prior breach by Defendants.

Tenth Affirmative Defense

Defendants' contract claims are barred by mutual mistakes.

Eleventh Affirmative Defense

Defendants' claims under the Idaho Consumer Protection Act are barred because the conduct complained of occurred in the context of a single transaction.

The Bank Parties reserve the right to plead additional affirmative defenses as they become known.

WHEREFORE, Countrywide Home Loans, Inc.; Bank of America, N.A.; and ReconTrust Company, N.A. respectfully requests the Court enter judgment in their favor on all counterclaims

and third party claims, and for costs and attorney fees, and for any other relief the Court deems just and appropriate under the circumstances.

DATED this 4<sup>th</sup> day of May, 2012.

BLOOM MURR & ACCOMAZZO, P.C.

By: 

Eric R. Coakley, Pro hac vice  
CO Bar # 34238


O'NEILL LAW, PLLC  
Derrick J. O'Neill, Of the Firm

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4<sup>th</sup> day of May, 2012, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

John Curtis Hucks Attorney at Law PO Box 737 New Meadows, ID 83654	<input type="checkbox"/> US Mail <input checked="" type="checkbox"/> Facsimile (208) 347-4128 <input type="checkbox"/> E-Mail
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Cheralyn Green, Paralegal



FILED

OCT 22 2012 8:30am

SHERRY WARD, CLERK



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Attorneys for Countrywide Home Loans, Inc., Bank of America, N.A., BAC Home Loan Servicing, L.P. and ReconTrust Company N.A.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA  
SHEETS; et. al.

Defendants.

Case No. CV-2010-2564

**MOTION FOR SUMMARY  
JUDGMENT ON DEFENDANTS  
COUNTERCLAIMS AND THIRD  
PARTY COMPLAINT**

COMES NOW Countrywide Home Loans, Inc. ("Countrywide"), Bank of America, N.A. and BAC Home Loan Servicing, L.P.<sup>1</sup> (Bank of America) and ReconTrust Company N.A.'s (ReconTrust) (Countrywide, Bank of America, and ReconTrust are collectively referred to herein as the "Banks") by and through its attorney of record, and pursuant to Mont. R. Civ. P. 56 hereby submit their motion for summary judgment. As more fully set forth in the brief filed contemporaneously herewith, the grounds for the motion are as follows:

<sup>1</sup> Bank of America Home Loan Servicing, L.P. is now known as Bank of America, NA.

1. The Sheets have produced no written evidence of a contract to refinance that satisfies the statute of frauds, I.C. § 9-505(5). To the extent the Sheets were to produce such a writing signed by the lender, the undisputed facts demonstrate there was no meeting of minds as to the material terms of a refinance loan. Further, Mrs. Sheets has no evidence of any oral, implied, or written agreement for a refinance loan.

2. The Sheets fail to demonstrate any of the elements for a claim for relief under 15 U.S.C. § 1691s-2(b) of the Fair Credit Reporting Act because they provide no evidence that they brought any dispute with a credit reporting agency prior to filing their claims. Mrs. Sheets has provided no evidence of credit reporting was done with regard to her.

3. The Sheets state law statutory claims under the Idaho Consumer Protection Act contending Bank of America made inaccurate reports to credit reporting agencies are expressly preempted by the 15 U.S.C.A. § 1681t(b)(1)(F).

4. The Sheets state law tort claim for "slander of credit", if a recognized cause of action in Idaho, is also barred by 15 U.S.C.A. § 1681t(b)(1)(F).

5. In the alternative, the Sheets' state law tort claim for "slander of credit" is expressly preempted by 15 U.S.C.A. § 1681h(e) of the Fair Credit Reporting Act because the Sheets have no evidence to show that any of the Banks made credit reports with willful malice or intent to injure them. Also, Mrs. Sheets has produced no evidence her credit reports were adversely affected.

6. In the alternative, the Sheets failure to provide evidence of a single inaccurate statement on their credit reports, and failure to demonstrate any actual damages, is fatal to their claims for slander and under the Idaho Consumer Protection Act. Also, Mrs. Sheets has produced no evidence that her credit reports were adversely affected.

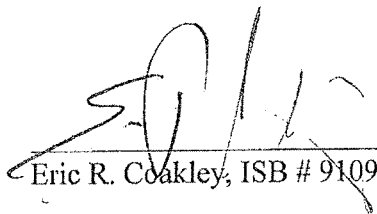
7. The Sheets fail to state a claim for relief under Idaho Code § 45-1502 because they fail to produce evidence showing ReconTrust and MERS are not separate entities.

WHEREFORE, for the reasons more fully set forth in the brief filed contemporaneously herewith, Countrywide Home Loans, Inc., Bank of America, N.A. and BAC Home Loan Servicing, L.P., and ReconTrust Company N.A.'s respectfully request the Court enter an order dismissing the Sheets' counterclaims and entering judgment on their behalf.

DATED this 19<sup>th</sup> day of October, 2012.

BLOOM MURR ACCOMAZZO & SILER, PC

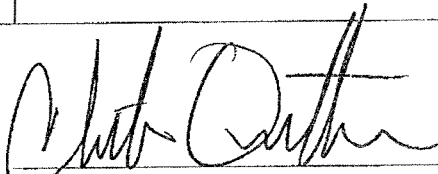
By:

  
Eric R. Coakley, ISB # 9109

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19 day of October, 2012, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

John Curtis Hucks Attorney at Law PO Box 737 New Meadows, ID 83654	<input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Facsimile (208) 347-4128 <input checked="" type="checkbox"/> E-Mail
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FILED

OCT 22 2012 8:30 am

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA  
SHEETS; et. al.

Defendants.

Case No. CV-2010-2564

**BRIEF IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT ON  
DEFENDANTS' COUNTERCLAIMS  
AND THIRD PARTY COMPLAINT**

**INTRODUCTION**

This case was brought by Countrywide for the very simple purpose of reinstating a deed of trust that was erroneously released after Defendants Ralph E. Sheets and Debra Sheets failed to close on a refinance loan application with Bank of America. Following a failed closing, the loan servicer erroneously serviced the existing loan as if it had been paid off by the refinance. Those errors were quickly corrected and reinstatement of the erroneously released Deed of Trust was the final step necessary to reverse this error.

Rather than cooperate with Bank of America, Mr. and Mrs. Sheets sought to capitalize on the error by bringing a variety of counter-claims, third party claims and defenses in an effort to avoid Mr. Sheets' obligations to repay the money he borrowed. First, Mr. and Mrs. Sheets assert claims against Bank of America for breach of contract in failing to close on the refinance loan (the 1st claim for relief alleging breach of contract and the 2nd claim for relief demanding specific performance). As demonstrated below, those claims are barred by the statute of frauds because the Sheets are unable to demonstrate the existence of a written contract signed by the lender or its agent agreeing to make the loan.

Assuming *arguendo* that the Sheets could supply some evidence of a signed written agreement for a refinance loan, they still fail to show formation of a contract because there was no meeting of the minds as to any essential terms of the purported contract. Mr. Sheets contends he agreed to a loan in a principal amount of \$108,000, at some interest rate less than 5.125%, and with no requirement that he escrow taxes and insurance. By contrast, the refinance loan that failed to close was for a loan in the amount of \$87,000, at an interest rate of 5.125%, and with a requirement that money for taxes and insurance be escrowed each month. Also, as a practical matter, Mrs. Sheets did not apply for a loan from Bank of America and can demonstrate no contractual relationship exists.

The Sheets also bring a number of claims premised upon credit reporting they contend was done in the wake of the failed refinance (the 3<sup>rd</sup> claim for relief alleging violations of the Idaho Consumer Protection Act, the 4<sup>th</sup> claim for relief alleging violations of the Federal Fair Credit Reporting Act, and the 5<sup>th</sup> claim for relief for slander of credit). Summary judgment should be granted on each of Mr. Sheets' claims for relief asserting false reporting because he has failed to

demonstrate any false reporting. Mr. Sheets acknowledges that he has not made any mortgage payments since October of 2009. Thus any credit reporting indicating he is late with his mortgage payments, or past due, is accurate. Moreover, as Mr. Sheets has acknowledged, his credit scores have increased since November of 2009. Accordingly, Mr. Sheets cannot demonstrate he was damaged by any credit reporting. As to Mrs. Sheets, she has not shown any credit reporting done with regard to her. These facts are fatal to all of the Sheets claims regarding credit reporting.

The Sheets also fail to establish their claims fall into the very narrow category of claims regarding credit reporting that are permitted by the FCRA. Claims may only be brought directly under the FCRA against furnishers of information where the furnisher has failed to investigate following a request for investigation made through a credit reporting agency. A dispute raised directly with the furnisher of information is not actionable under the statute. Here, Mr. Sheets has not identified any requests for investigation he initiated through a credit reporting agency. Mr. Sheets has therefore failed to present any facts that form an actionable claim for relief directly under the FCRA.

Mr. Sheets' state law claims regarding credit reporting are barred by the express preemption provisions of the FCRA. The first such provision, found at 15 U.S.C.A. § 1681t(b), expressly prohibits any state law claims predicated upon a failure of a furnisher of credit information to accurately report credit information. While courts are unanimous that this provision bars any state statutory claims such as those brought under various states' consumer protection acts, a minority of courts has found that only state statutory actions, and not state tort actions, are preempted by 15 U.S.C.A. § 1681t(b). Those courts holding the minority position have held that a second preemption provision, the one found at 15 U.S.C.A. § 1681h, applies to

state law tort claims. That section expressly preempts common law tort claims “in the nature of defamation, invasion of privacy, or negligence” against furnishers of information unless the person bringing the claim can demonstrate the “false information [was] furnished with malice or willful intent to injure such consumer.” Here, Mr. Sheets has not been able to demonstrate any malice or willful intent to injure him. Thus, Mr. Sheets’ state law statutory claims are clearly preempted by either the minority or majority interpretation of the FCRA preemption sections.

The Sheets also bring a claim for relief alleging that ReconTrust is not an eligible trustee because, they contend incorrectly, it is the same company as Mortgage Electronic Registration Systems (“MERS”), the beneficiary under the Deed of Trust. As an initial matter, the Sheets’ assertion of this claim is confusing, as the logical result would be that ReconTrust was without authority to execute and record the erroneous reconveyance, a result contrary to what the Sheets seem to be seeking in this case. The Sheets’ claim under this section however fails because MERS and ReconTrust are not the same entities. The Sheets can point to no authority that demonstrates that ReconTrust may not act as a trustee if its employee is also a designated agent of MERS and have no facts to demonstrate they are the same entity.

For these reasons, as described more fully below, the Sheets’ counterclaims should be dismissed with prejudice and judgment on all counterclaims entered in favor of the Bank Defendants.

#### **STATEMENT OF UNDISPUTED MATERIAL FACTS**

1. On or about December 21, 2004, Defendant Ralph Sheets borrowed \$65,250.00 from Countrywide Home Loans, Inc., d/b/a America’s Wholesale Lender. Complaint filed March 30, 2010 (herein, the “Complaint”) at ¶ 6; admitted in Defendants’ Amended Answer, Second

Amended Counterclaims, Third Party Complaint, and Demand for Jury Trial, dated April 16, 2002 (herein, the "Answer and Counterclaims") at p. 2, ¶ 6 and p. 7, ¶ 9. A true and accurate copy of the Note is attached hereto as **Exhibit 1**. This is referred to herein as the "Mortgage Loan".

2. In order to borrow the money, Mr. Sheets executed a Deed of Trust securing property commonly known as 5603 Highway 95, New Meadows, Idaho, 83654 (the "Property"). Complaint at ¶ 6 and Exhibit A, a true and accurate copy of the Deed of Trust is attached hereto as **Exhibit 2**; Admitted at Answer and Counterclaims p. 2, ¶ 6; **Exhibit 3**, Deposition of Ralph Sheets at p. 14, ll. 8 – 13 and Deposition Exhibit 2.<sup>1</sup> The Deed of Trust was recorded on December 28, 2004 as Instrument No. 107860.

3. Defendant Debra Sheets did not execute the Note and was not a borrower on the Mortgage Loan. Exhibit 3, at p. 13, ll. 18 – 22.

4. Mrs. Sheets' sole interest in the Property is derived from her community property rights as the wife of Mr. Sheets. Exhibit 3, at p. 13, l. 25 – p. 14, l. 1 and p. 15, ll. 13 – 16.

5. In the Note, Mr. Sheets promised to repay the Mortgage Loan by making monthly payments of principal and interest in the amount of \$563.92 beginning February 1, 2005 and continuing each month thereafter until paid in full upon the maturity date, January 1, 2020. Exhibit 1 at p. 1, ¶ 3.

6. In the Note, Mr. Sheets agreed that "[e]ven if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time." Exhibit 1 at p. 2, ¶ 6(D).

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<sup>1</sup> The convention used in this motion for citing to the deposition is to use "p." for page, and "l." or "ll." for line or lines. For example, "p. 13, ll. 18 – 23" refers to "page 13, lines 18 to 23" and "p. 13, l. 25 – p. 14, l. 1" should be read as "page 13, line 25 to page 14, line 1." Referenced Deposition Exhibits are attached at Exhibit 3 along with the relevant deposition pages.



7. In the Deed of Trust, Mr. and Mrs. Sheets agreed, “[n]o offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.” Exhibit 2 at p. 3, last sentence of ¶ 1.

8. In the Deed of Trust, Mr. and Mrs. Sheets agreed, “[e]xtension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower.” Exhibit 2 at p. 8, ¶ 12.

9. Mr. Sheets has not paid back the \$65,250.00 he borrowed. Exhibit 3, at p. 15, ll. 17 – 21; **Exhibit 4**, Affidavit of Ronald Odeyemi at ¶ 6.

10. Mr. Sheets has not made a regularly scheduled monthly payment since October 30, 2009, which brought the account current for the payment due November 1, 2009. Exhibit 3 at p. 15, l. 25 – p. 16, l. 4 and p. 71, ll. 9 – 23; Answer and Counterclaims at ¶ 9; Exhibit 4 at ¶ 7; **Exhibit 5**, at Response to Interrogatory No. 20.

11. Mr. Sheets was unable to make a payment online in November 2009 because the Mortgage Loan did not appear on his online account. Exhibit 3 at p. 18, ll. 13 – 22 and p. 60, l. 20 – p. 61, l. 8.

12. Thereafter, Mr. Sheets has not attempted to make another payment through any other means, such as by mailing the payment or by telephone. Exhibit 3 at p. 18, l. 23 – p. 19, l. 3.

13. Mr. Sheets has also not saved or set aside his monthly mortgage payments and does not have any funds available to pay towards bringing the Mortgage Loan current. Exhibit 3, at p. 21, l. 11 – p. 22, l. 14

14. On or about April 2, 2009, Mr. Sheets applied via telephone to Bank of America for a refinance. Answer and Counterclaims at p. 8, ¶ 11.

15. On or about May 6, 2009, Mr. Sheets executed and submitted a written loan application seeking a loan in the principal amount of \$87,500 at an interest rate of 5.125%. Exhibit 3 at p. 35, ll. 2 – 20 and Deposition Exhibit 8; Exhibit 4 at ¶ 8. This is referred to herein as the “Mortgage Refinance”.

16. Mrs. Sheets did not apply for the Mortgage Refinance. Exhibit 3 at p. 38, ll. 16 – 24.

17. A closing on the Mortgage Refinance was scheduled for October 27, 2009. Answer and Counterclaims at p. 10, ¶ 16; Exhibit 4 at ¶ 11.

18. Mr. Sheets testified that at the closing, the title company agent did not let him execute documents because the documents were “bad”, and as a result the Mortgage Refinance did not close. Answer and Counterclaim at ¶ 10; Exhibit 3 at p. 52, ll. 8 – 20.

19. Bank of America has no record regarding the title company agent’s determination that the loan documents were “bad”, and at the time of the closing was fully prepared to close and fund the loan. Exhibit 4 at ¶ 14.

20. Mr. Sheets received a package of closing documents for the Mortgage Refinance at his home *via* Federal Express on or about October 27, 2009. Exhibit 3 at p. 29, l. 18 – p. 30, l. 1. 1; Exhibit 5 at Response to Interrogatory No. 5.

21. Among the closing documents received by Mr. Sheets was an unexecuted Note. Exhibit 4 at ¶ 13; Exhibit 3 at p. 29, l. 25 – p. 30, l. 7, and Deposition Exhibit 7.

22. The Mortgage Refinance closing documents did not reflect what Mr. Sheets believed were the terms of the refinance he had applied for. Exhibit 3, at p. 30, l. 21 – p. 31, l. 4 and p. 34, ll. 6 – 19.

23. The Note reflected in the Mortgage Refinance closing documents was for a principal amount of \$87,500.00 at an interest rate of 5.125% and required an escrow account for taxes and insurance. Exhibit 3 at p. 60, ll. 5 – 10 and Deposition Exhibit 7, ¶¶ 1 & 2.

24. Mr. Sheets wanted, and believed he had applied for and would be offered, a refinance in a principal amount of \$108,000 and with no requirement that he escrow money for taxes and insurance. Exhibit 3 at p. 30, l. 21 – p. 31, l. 4 and p. 56, l. 16 – p. 57, l. 7.

25. Had he been given the opportunity by the title agent, Mr. Sheets would not have executed the Mortgage Refinance documents because they had a requirement for escrow and because he did not agree to the loan costs as set forth in the closing documents. Exhibit 3 at p. 60, ll. 5 – 14.

26. Mr. Sheets did not receive any documentation from Bank of America indicating it would make a loan in the amount of \$108,000, or for an interest rate of less than 5.125%, or that did not require him to escrow taxes and insurance. Exhibit 3 at p. 31, ll. 5 – 15 and p. 40, ll. 9 – 13.

27. Mr. Sheets is not seeking to enforce the Mortgage Refinance reflected in the unexecuted closing documents including the note, but rather the undocumented loan of \$108,000, at some interest rate of less than 5.125%, with lower costs, and no requirement that taxes and insurance be escrowed. Exhibit 3 at p. 36, ll. 21 – 25 and p. 37, l. 18 – p. 38, l. 6.

28. Following the failed loan closing, Bank of America erroneously proceeded as if the refinance had closed by funding the Refinance Loan and changing servicing status for the Mortgage Loan. Exhibit 4 at ¶ 18.

29. Among the errors, on November 9, 2009, the trustee erroneously recorded a reconveyance of the Deed of Trust on the Mortgage Loan. Answer and Counterclaim at p. 11, ¶ 19; *see also*, Complaint at ¶ 7 and Exhibit B thereto.

30. On or about November 24, 2009, Bank of America noticed the error and unfunded the Mortgage Refinance and returned the Mortgage Loan to normal servicing. Exhibit 3 at ¶ 19.

31. On or about March 19, 2010, correspondence was sent to Mr. Sheets requesting him to cooperate to correct the erroneous reconveyance of the Deed of Trust and asking for Mr. and Mrs. Sheets to execute the necessary stipulation. Exhibit 3 at p. 23, ll. 12 – 17 and Deposition Exhibit 4.

32. Mr. Sheets and Mrs. Sheets did not execute the stipulation and, as evidenced by the pleadings in this case, they have not cooperated in correcting the erroneous reconveyance. Exhibit 3 at p. 23, l. 23 – p. 24, l. 14.

33. Bank of America corrected all errors with regard to servicing and returned all money paid by Mr. Sheets for the appraisal and application for the Mortgage Loan in about April of 2010. Exhibit 3 at p. 46, l. 25 – p. 47, l. 13; Exhibit 4 at ¶¶ 20 – 21.

34. Mr. and Mrs. Sheets have been unable to identify any actions they took in reliance on purported representations made by Bank of America. Exhibit 5 at Response to Interrogatory No. 19.

35. Mr. Sheets contends that his Trans Union and Experian credit reports are erroneous because they report their payments on the loan as "120 days late". Exhibit 3 at p. 76, ll. 5 – 11; Exhibit 5 at Response to Interrogatory No. 8.

36. Mr. Sheets notified only "Countrywide/Bank of America directly" regarding his dispute about credit information, and is unable to identify any dispute he filed with a credit reporting agency. Exhibit 5 at Response to Interrogatory No. 9.

37. Mr. Sheets was unable to identify any credit reporting with regard to the Mortgage Refinance application that did not close. Exhibit 3 at p. 64, l. 22 – p. 65, l. 1.

38. A credit report obtained on or about September 22, 2009 in connection with the Mortgage Refinance application indicates that at that time, Mr. Sheets' credit scores were as follows: Experian – 750, Equifax – 695, and Transunion (TUC) – 685. Exhibit 4 at ¶ 9; *see also*, Exhibit 3 at p. 65, ll. 3 – 23 and Deposition Exhibit 14.

39. Mr. Sheets acknowledges that his credit scores have only increased since November of 2009. Exhibit 5 at Response to Interrogatory No. 8.

40. Mr. Sheets has no documentation that would indicate his credit scores decreased from November of 2009 through the present. Exhibit 3 at p. 66, ll. 19 – 21.

41. A credit report provided by Mr. Sheets in discovery indicates that his Equifax credit score increased from 695 to 744 between the September 22, 2009 credit report, and the November 25, 2010 credit report he produced in discovery. Exhibit 3 at p. 65, l. 24 – p. 66, l. 21 and Deposition Exhibits 14 and 15.

42. Mr. Sheets conceded at his deposition that his Equifax credit report contains no information which he considers inaccurate. Exhibit 3 at p. 66, l. 22 – p. 67, l. 12.

43. Mr. Sheets was unable to identify any inaccurate credit information in another Equifax credit report he produced in discovery. Exhibit 3 at p. 67, ll. 17 – p. 68, l. 2 and Deposition Exhibit 16.

44. Mr. Sheets was unable to identify any inaccurate reporting on an Experian credit report he produced through discovery, other than to state he believes the statement in the report of past due of \$2,255 as of March 2010 “could be wrong.” Exhibit 3 at p. 67, l. 17 – p. 68, l. 19 and Deposition Exhibit 17.

45. Mr. Sheets acknowledges that the last payment he made on the Mortgage Loan was in October of 2009 for the payment due November of 2009. Exhibit 3 at p. 15, l. 25 – p. 16, l. 4 and p. 71, ll. 9 – 23; Answer and Counterclaims at ¶ 9; Exhibit 4 at ¶ 7; Exhibit 5, Response to Interrogatory No. 20.

46. Under terms of the Note, as of March, 2010, Mr. Sheets was due for monthly installments of \$563.92 for December of 2009, January 2010, February 2010, and March 2010, for a total past due principal and interest payments of \$2,255.60. Exhibit 1 at ¶ 3.

47. A credit report that was provided by Mr. Sheets in discovery indicates that his Transunion credit score increased from 685 to 775 between September 22, 2009 and May 16, 2011. Exhibit 3 at p. 69, l. 11 – p. 70, l. 11 and Deposition Exhibit 18.

48. Mr. Sheets testified that the statement in the Transunion credit report that he is “120 days past due” and that \$2,255 past due is the only information in his Transunion credit report upon which he basis his claims for relief. Exhibit 3 at p. 76, ll. 5 – 11.

49. The Sheets have identified the credit reporting as the sole incident supporting their claim for violations of the Idaho Consumer Protection Act. Exhibit 5 at Answer to Interrogatory No. 10 (referencing Answers Nos. 9 and 10).

50. Mr. Sheets does not have any evidence that anyone at Bank of America acted with intent to deceive or harm him in its dealings with him. Exhibit 3 at p. 87, ll. 10 – 24.

### STANDARDS ON SUMMARY JUDGMENT

“[T]he purpose of summary judgment is to eliminate the necessity of trial where facts are not in dispute and where existent and undisputed facts lead to a conclusion of law which is certain.” *Berg v. Fairman*, 107 Idaho 441, 444-445, 690 P.2d 896, 899 - 900 (Idaho, 1984), citations omitted. Summary judgment is not to be viewed as “a disfavored procedural shortcut”, but rather as the “principal tool by which factually insufficient claims or defenses can be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources.” *Nu-West Min. Inc. v. U.S.*, 768 F.Supp.2d 1082, 1086 – 1087 (D.Idaho, 2011), quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).<sup>2</sup>

Summary judgment is warranted “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c). “A material fact is one upon which the outcome of the case may be different.” *Peterson v. Romine*, 131 Idaho 537, 540, 960 P.2d 1266, 1269 (1998).

Flimsy or transparent contentions, theoretical questions of fact which are not genuine, or disputes as to matters of form do not create genuine issues which will preclude summary judgment.

<sup>2</sup> In interpreting Idaho rules, courts may look to analogous Federal rules that are identical in all material respects. *Martin v. Hoblit*, 133 Idaho 372, 376-377, 987 P.2d 284, 288 - 289 fn. 3 (Idaho, 1999).

Neither is a mere pleading allegation sufficient to create a genuine issue as against affidavits and other evidentiary materials which show the allegation to be false. A mere scintilla of evidence is not enough to create an issue; there must be evidence on which a jury might rely.

*Weisel v. Beaver Springs Owners Ass'n, Inc.*, 272 P.3d 491, 496 – 497 (Idaho, 2012), citations omitted.

### ARGUMENT

- A. **The Sheets' claims for breach of contract and specific performance fail because they have no admissible evidence demonstrating an enforceable contract to refinance exists.**

In order to bring a claim for breach of contract to make the Mortgage Refinance, the Sheets are required to show a writing signed by the lender or his agent. The statute of frauds, I.C. § 9-505(5), states:

Certain agreements to be in writing. - In the following cases the agreement is invalid, unless the same or some note or memorandum thereof, be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

\* \* \*

5. A promise or commitment to lend money or to grant or extend credit in an original principal amount of fifty thousand dollars (\$50,000) or more, made by a person or entity engaged in the business of lending money or extending credit.

Thus, in order for a promise to make a loan to be binding, it must be in writing and signed by Bank of America. *Hoffman v. SV Co.*, 102 Idaho 187, 190, 628 P.2d 218, 221 (1981). The writing must plainly set forth all its terms, otherwise it cannot be enforced. *Id.*

With regard to Mr. Sheets' breach of contract claim, it is beyond dispute that the statute of frauds applies because Bank of America is an entity engaged in the business of lending



money and extending credit and Mr. Sheets applied for a loan in excess of \$50,000. The statute bars Mr. Sheets' contract claims because he has failed to demonstrate a writing signed by Bank of America setting forth plainly all of the terms of the alleged contract. In their responses to discovery, and at his deposition, Mr. Sheets repeatedly confirmed that this action is being brought to enforce purported oral agreements to lend him \$108,000 at less than 5.125% interest, and with no requirement to escrow monies for taxes and insurance that he purportedly discussed with a loan officer. Exhibit 5 at Response to Interrogatory No. 7; Exhibit 3 at p. 30, l. 21 – p. 31, l. 4; p. 36, ll. 21 – 25 and p. 37, l. 18 – p. 38, l. 6. Mr. Sheets has conceded that there is no written document signed by Bank of America containing those terms. Exhibit 3 at p. 31, ll. 5 – 15 and p. 40, ll. 9 – 13.

The unsigned loan closing documents cannot satisfy the statute because they are unsigned and, as Mr. Sheets has stated, “[t]hose documents did not have the correct information that the loan officer Paul Campbell and Sheets had agreed to.” Exhibit 5 at Response to Interrogatory No. 7. Mr. Sheets testified that had he been given the opportunity by the title agent, he would not have executed the Mortgage Refinance documents because he did not agree to the loan costs or requirement for escrow as set forth in the closing documents. Exhibit 3 at p. 60, ll. 5 – 14. In addition to failing to satisfy the statute of frauds, Mr. Sheets has failed to show there was a meeting of minds on the terms of the loan.

Mrs. Sheets did not apply for a loan, thus her claims for breach of contract and specific performance should be dismissed. Accordingly the Sheets' first and second claims for relief should be dismissed with prejudice.

**B. Mr. and Mrs. Sheets fail to demonstrate that they have evidence necessary to assert a claim for relief under 15 U.S.C. § 1691s-2(b) of the Fair Credit Reporting Act ("FCRA").**

Congress has provided that the sole private right of action that may be brought directly under the FCRA against furnishers of credit information is for a violation of 15 U.S.C. § 1691s-2(b), a failure to correct erroneous reporting after receiving notice of dispute from a credit reporting agency.

The responsibilities of a furnisher of credit information are set forth at 15 U.S.C. § 1681s-2. Subsection (a) broadly imposes duties upon furnishers of credit information to provide consumer reporting agencies with accurate information. However, subsections (c) and (d), in turn, limit the private remedies available for violations of subsection (a). More precisely, subsection (c) eliminates the availability of direct remedies for consumers by making 15 U.S.C. § 1681n and 1681o, the FCRA's broad provisions creating civil liability for willful and negligent noncompliance respectively, inapplicable to violations of subsection (a). And subsection (d) provides that the requirements imposed by subsection (a) are only enforceable by government officials. Thus, a debtor may not bring a private cause of action for violations of a creditors' responsibility to provide accurate information under subsection (a). *See, e.g., Aklagi v. Nationscredit Financial Services Corp.*, 196 F.Supp.2d 1186, 1192 (D.Kan.2002); *Hasvold v. First USA Bank*, 194 F.Supp.2d 1228, 1231 (D.Wyo.2002); *DiMezza v. First USA Bank, Inc.*, 103 F.Supp.2d 1296, 1299 (D.N.M.2000).

The only private cause of action available against a furnisher of information then is under 15. U.S.C.A. § 1621s-2(b). Subsection (b) makes the furnisher's responsibilities contingent upon receiving "notice pursuant to section 1681i(a)(2)." This means that a furnisher of credit information has no responsibility to investigate a credit dispute until after it receives notice from a

consumer reporting agency. Under the statutory language, notification from a consumer does not trigger liability under this section. *See, e.g., Lowe v. Surpas Res. Corp.*, 253 F.Supp.2d 1209, 1253-54 (D.Kan.2003) (collecting cases); *Aklagi*, 196 F.Supp.2d at 1193; *Young v. Equifax Credit Info. Servs., Inc.*, 294 F.3d 631 (5th Cir.2002); *Jaramillo v. Experian Info. Solutions, Inc.* 155 F.Supp. 356, 363 (E.D.Pa.2001); *Yelder v. Credit Bureau of Montgomery, L.L.C.*, 131 F.Supp.2d 1275, 1289 (M.D.Ala.2001); *Dornhecker v. Ameritech Corp.*, 99 F.Supp.2d 918, 928-29 (N.D.Ill.2000).

Mr. Sheets has failed to present any facts that demonstrate he has an actionable claim under 15 U.S.C. § 1681s-2(b). He contends only that he contacted "Countrywide/Bank of America directly" about the purported dispute and fails to identify any facts establishing that he brought complaints through a credit agency. Exhibit 5, Response to Interrogatory No. 9. His counterclaim asserts only that he seeks relief on the grounds that "Bank of America has provided false information to credit reporting agencies." Answer and Counterclaims at ¶ 31. That duty is covered by 15 U.S.C. § 1681s-2(a). As demonstrated above, violations under that section are only enforceable by government agencies. There is no private right of action that may be brought under the FCRA for "provid[ing] false information to credit agencies."

**C. Mr. and Mrs. Sheets' state law statutory and common law claims are expressly preempted by the FCRA.**

The FCRA expressly prohibits any state law claims predicated upon a furnisher of credits failure to accurately report credit information to credit agencies.

No requirement or prohibition may be imposed under the laws of any State-

(1) With respect to any subject matter regulated under - -

\* \* \*

(F) section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies . . .

15 U.S.C.A. § 1681t(b)(1)(F). As described above, section 1681s-2 deals with responsibilities of furnishers of credit information, including the duty to provide accurate information to credit agencies. *See*, 15 U.S.C.A. § 1681s-2(a).

There is no reported case law in Idaho on preemption under the FCRA. The vast majority of United States District Courts in the 9<sup>th</sup> Circuit and elsewhere, and all United States Circuit Courts considering the issue, have found that this section of the FCRA preempts both state statutory and common law causes of action premised upon a furnisher's responsibility to provide accurate information to credit reporting agencies. *Purcell v. Bank of America*, 659 F.3d 622, 624-25 (7<sup>th</sup> Cir. 2011); *Macpherson v. JPMorgan Chase Bank, N.A.*, 665 F.3d 45 (2d Cir. 2011); *see also*, *Miller v. Bank of America, Nat. Ass'N*, 858 F.Supp.2d 1118, 1124 – 1125 (S.D. Cal. 2012)(finding majority of courts in the 9<sup>th</sup> Circuit interpret 15 U.S.C. § 1681t(b) to prohibit both state statutory and common law actions because Congressional intent was to limit actions against furnishers of information to only remedies to the statutory scheme expressly provided under the FCRA).

While courts are unanimous that § 1681(b)(1)(F) preempts all state law statutory claims, some district courts in the 9<sup>th</sup> Circuit have held that section does not apply to state law tort claims. *See, El-Aheidab v. Citibank (South Dakota), N.A.*, 2012 WL 506473, \*\* 6 – 8 (N.D. Cal. 2012)(discussing cases). This is because the FCRA contains a second preemption provision, 15 U.S.C. § 1681h(e), that predates 15 U.S.C.A. § 1681t(b)(1)(F) by almost thirty years. That second preemption section preempts common law tort claims “in the nature of defamation, invasion of privacy, or negligence” against furnishers of information “based on information disclosed pursuant to section 1681g, 1681h, or 1681m of this title” unless the person bringing the

claim can demonstrate “false information [was] furnished with malice or willful intent to injure such consumer.” 15 U.S.C.A. § 1681h(e).

In *El-Aheidab*, the Court extensively discussed these cases and found the majority reasoning to be more persuasive. *El-Aheidab*, 2012 WL at \* 8. Quoting the Supreme Court’s holding in *Erie R.R. v. Tompkins*, 304 U.S. 64, 78, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), the Southern District of California held that “the law of the state [language found in § 1681t(b)(i)(F)] encompasses, without distinction, the law declared by its legislature in a statute as well as the law declared by its highest court in a decision.” *El-Aheidab*, 2012 WL at \* 8, internal quotations omitted. Upon an examination of the two preemption sections, the Court held that such a reading would not render the second preemption provision superfluous because the second preemption clause would apply to sections of the act that the first leaves untouched. *Id.*

Here, the Sheets’ claims under the Idaho Consumer Protection Act are preempted because they directly allege a violation of the duty to accurately report credit information created by 15 U.S.C.A. § 1681s-2(a). The sole violation of the Idaho Consumer Protection Act alleged in this case is that Bank of America did not accurately report Mr. Sheets’ credit information. Exhibit 5 at Response to Interrogatory Nos. 8, 9, and 10. As Courts have unanimously found, the clear language of 15 U.S.C.A. § 1681t(b)(F) specifically prohibits state statutory claims insofar as they relate to the responsibilities of furnishers of credit information governed by section 1681s-2. Thus, the Sheets’ claims under the Idaho Consumer Protection Act are preempted by the FCRA.

Likewise, the Sheets’ claim for slander of credit is wholly predicated upon the allegation that “Bank of America has provided false information to third-party credit reporting agencies and to the Office of the Comptroller of the Currency.” Answer and Counterclaims at p. 15, ¶ 33. In

response to discovery, Mr. Sheets identified only the information reported to credit agencies and did not identify any slanderous statements purportedly made to the Office of the Comptroller of the Currency. Exhibit 5 at Response to Interrogatories Nos. 13 and 8. Where Mr. Sheets' claim for slander relates wholly to the responsibilities of furnishers of credit information governed by section 1681s-2, those claims are also preempted as provided for in the majority rules as expressed by the 7<sup>th</sup> Circuit, 2<sup>nd</sup> Circuit, and vast majority of U.S. District courts in the 9<sup>th</sup> Circuit and across the nation.

Even applying the minority reasoning that 15 U.S.C.A. § 1681h(e) is the section applicable to preemption of state law tort claims, the Sheets' claim for slander of credit is still preempted because they have not produced any evidence to show that any of the Banks made credit reports with willful malice or intent to injure them. Exhibit 3 at p. 87, ll. 10 – 24. Absent such a showing, the Sheets' claims are specifically preempted by that section. Under either reading of the preemption provisions contained in the FCRA, the Sheets' state law statutory and tort claims should be dismissed with prejudice and judgment entered in favor of the Banks.

**D. In the alternative, the Sheets fail to demonstrate any false statements were made on their credit reports which resulted in harm to them which could give rise to a claim for slander of credit or under the Idaho Consumer Protection Act.**

Even if the Sheets' state law claims regarding credit reporting were not barred by the express preemption provisions of the FCRA, summary judgment would still be appropriate because the Sheets cannot demonstrate any false reporting, or that they were damaged by any of the alleged credit reporting activity.

**1. The Sheets do not have any evidence to prevail on their claim for slander of credit.**

Courts recognizing the tort of slander of credit have made clear that it requires proof of all the elements of an ordinary slander or defamation cause of action. See, e.g., *Federal Deposit Ins. Corp. v. Bathgate*, 27 F.3d 850, 871 (3d Cir.1994) (“The torts of trade libel, slander of credit, and slander of title require ‘the publication, or communication to a third person, of false statements concerning the plaintiff, his property, or his business.’”); *Musto v. Bell South Telecommunications Corp.*, 748 So.2d 296, 297 n. 1 (Fla.App.1999) (“slander of credit [is] a cause of action established on proof the defendant finance company willfully and maliciously made a false statement to another finance company regarding the plaintiff’s indebtedness, which statement was known by the defendant to be false when made, and was made with the intent of preventing the plaintiff from procuring credit”).

There do not appear to be any Idaho cases recognizing the tort of slander of credit. *But see, Hoglan v. First Sec. Bank of Idaho, N.A.*, 120 Idaho 682, 685, 819 P.2d 100, 103 (Idaho, 1991)(dismissing a libel of credit claim as barred by the statute of limitations without expressly recognizing the tort). The elements of a slander claim require showing beyond a reasonable doubt of proof of four elements: (1) publication of a slanderous statement; (2) its falsity; (3) malice; and (4) resulting special damages. *Weaver v. Stafford*, 134 Idaho 691, 701, 8 P.3d 1234, 1244 (2000) (citing *Matheson v. Harris*, 98 Idaho 758, 760-61, 572 P.2d 861, 863-64 (1977)).

The essential truth of the statements made is a complete defense to a claim of slander:

It is not necessary to establish the literal truth of the precise statement made. Slight inaccuracies of expression are immaterial provided that the defamatory charge is true in substance. In Idaho, the Court has adopted this rule and added that so long as the substance, the gist, the sting of the allegedly libelous charge be justified, minor inaccuracies do not amount to falsity.

*Steele v. Spokesman-Review*, 138 Idaho 249, 61 P.3d 606, 610 (Idaho 2002) (citations and quotations omitted).

Assuming, *arguendo*, that Mr. Sheets' slander of credit claims are not barred by the express preemption provisions of the FCRA, summary judgment should still be granted in favor of Bank of America because Mr. Sheets fails to point to any false or inaccurate statements in his credit reports. Mr. Sheets concedes there was no credit reporting with regard to the Mortgage Refinance application that did not close. Exhibit 3 at p. 64, l.22 – p. 65, l. 1. The sole statements Mr. Sheets pointed to in his discovery responses were that his TransUnion and Experian credit reports that “as of 5/16/2011 he is 120 days late on his mortgage payments.” Exhibit 5 at Response to Interrogatory No. 8. Mr. Sheets was unable to identify any inaccurate reporting on an Experian credit report he produced through discovery, other than to state the past due of \$2,255 as of March 2010 “could be wrong.” Exhibit 3 at p. 67, l. 17 – p. 68, l. 19 and Deposition Exhibit 17.

The statements on the credit reports that Mr. Sheets points to are essentially accurate. Mr. Sheets acknowledges that the last payment he made on the Mortgage Loan was for November 2009. Exhibit 3 at p. 15, l. 25 – p. 16, l. 4 and p. 71, ll. 9 – 23, *inter alia*. Under terms of the Note, as of March, 2010, Mr. Sheets was due for monthly installments of \$563.92 for December of 2009, January 2010, February 2010, and March 2010. Exhibit 1. Thus, as of March 2010 he had a total past due principal and interest payments of exactly \$2,255.60. Likewise, the statements that the loan is more than 120 days past due is not false. The last payment Mr. Sheets acknowledges he made was for November 2009, was well over 120 days ago.

Mr. Sheets has also been unable to point to any concrete damages he suffered as a result of the credit reporting. He acknowledged in response to discovery and at his deposition that his credit



scores have only increased since November of 2009. Exhibit 5 at Response to Interrogatory No. 8; Exhibit 3 at p. 65, l. 24 – p. 66, l. 21; p. 69, l. 11 – p. 70, l. 11 and Deposition Exhibits 14, 15 and 18. Mr. Sheets has no documentation that would indicate his credit scores decreased from November of 2009 through May 17, 2012. Exhibit 3 at p. 66, ll. 19 – 21. Even if Mr. Sheets could point to a false statement in his credit reports, he has provided no calculation to demonstrate what negative effect that reporting had on his credit scores and has offered no concrete evidence to show that it resulted in any damages to him. Because Mr. Sheets has failed to identify facts to satisfy any of the elements of a slander of credit claim, his claims should be dismissed with prejudice and judgment entered in favor of Bank of America.

**2. The Sheets fail to identify any deceptive business practice or identify damages necessary to state a claim for relief under the Idaho Consumer Protection Act.**

Under the Idaho Consumer Protection Act, recovery is permitted only for specific actions that are deemed to be unfair or deceptive. *Taylor v. McNichols*, 149 Idaho 826, 243 P.3d 642, 662 (Idaho 2010); *see also* I.C. § 48–603(E). The Act enumerates nineteen prohibited practices. I.C. § 48–603(1)–(19). To be actionable, a defendant's conduct must fall within one of the statute's nineteen subsections. *State v. Daicel Chem. Indus., Ltd.*, 141 Idaho 102, 106 P.3d 428, 433–34 (Idaho 2005).

In order to bring a claim under the Idaho Consumer Protection Act, an individual must demonstrate some “ascertainable loss of money or property... as a result of the use or employment by another person of a method, act or practice” which is misleading, false or deceptive or otherwise prohibited by the act. *Yellowpine Water User's Ass'n v. Imel*, 105 Idaho 349, 351–352, 670 P.2d 54, 56 – 57 (Idaho, 1983). A claim alleging a deceptive act or practice differs from a breach of contract claim in that the former requires more than a mere broken

promise. "The basis for a contract action is the parties' agreement; to succeed under the consumer protection law, one must show not necessarily an agreement, but in all cases, an unfair or deceptive practice." *American Airlines, Inc. v. Wolens*, 513 U.S. 219, 233, 115 S.Ct. 817, 130 L.Ed.2d 715 (1995) (concerning the Illinois Consumer Protection Act). *See also Golembiewski v. Hallberg Ins. Agency, Inc.*, 262 Ill.App.3d 1082, 200 Ill.Dec. 113, 635 N.E.2d 452, 460 (1994) ("the [consumer fraud] Act should not apply to simple breach of contract claims.")

As described above, assuming *arguendo* the Sheets' claims are not preempted by the FCRA, they have failed to identify any facts demonstrating Bank of America or any of the Banks engaged in deceptive acts or practices. In response to discovery, the Sheets failed to identify any intentional actions that would fit the definitions of deceptive acts and practices enumerated in I.C. § 48-603, despite being specifically asked to "[i]dentify . . . the manner in which you contend the CPA was violated, and the specific provision(s) of the CPA violated." Exhibit 5 at Response to Interrogatory No. 10. In discovery, Mr. Sheets conceded that he had no evidence of a deceptive act or practice. Exhibit 3, at p. 87, ll. 10 – 24. Also, as discussed above, Mrs. Sheets has produced no evidence to demonstrate any credit reporting about her. Accordingly, the Sheets' claims under the CPA should be dismissed with prejudice and judgment entered in favor of the Banks.

**F. The Sheets fail to state a claim for relief under I.C. § 45-1502 because they fail to produce evidence showing ReconTrust and MERS are not separate entities.**

The Sheets contend, incorrectly, that ReconTrust and MERS cannot be trustee and beneficiary because the agent for MERS who executed a substitution of trustee is also an employee of ReconTrust. As an initial matter, this position undercuts the Sheets opposition to Countrywide's claims seeking to strike the erroneous reconveyance recorded by ReconTrust. If ReconTrust did

not have authority to execute and record the reconveyance for failure to comply with I.C. § 45-1502, it follows that the Court should strike the reconveyance.

However, the Sheets' claim rests upon their mistaken presumption that MERS and ReconTrust are the same entity. MERS acts as trust deed beneficiary in a nominee capacity for mortgage loan lenders and servicers. MERSCORP Holdings, Inc. the parent company to MERS owns and operates the MERS System. The MERS System is a private electronic database, which tracks the transfer of promissory notes and servicing rights to mortgage loans associated with MERS security instruments which secure repayment of the debt. *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1038 – 1039 (9<sup>th</sup> Cir. 2011). In carrying out its function as agent for members of the MERS System in its capacity as trust deed beneficiary, MERS appoints employees of its member institutions as officers to execute documents on its behalf.

MERS relies on its members to have someone on their own staff become a MERS officer with the authority to sign documents on behalf of MERS. *See, Dordan*, 12 Loy. J. Pub. Int. L. at 182; *Jackson*, 770 N.W.2d at 491. As a result, most of the actions taken in MERS's own name are carried out by staff at the companies that sell and buy the beneficial interest in the loans. *Id.*

*Id.*, at 656 F.3d at 1039 (9<sup>th</sup> Cir. 2011); *see also, Aliberti v. GMAC Mortgage, LLC*, 779 F.Supp.2d 242, 249 (D.Mass. 2011) (upholding assignment executed by "vice president" of MERS who was employed by the entity to which MERS's rights were assigned).

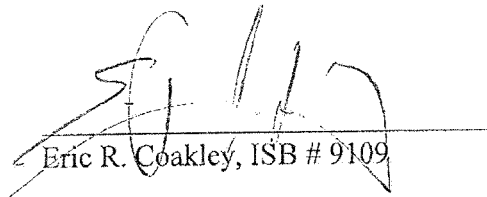
Here, the Sheets have produced no evidence that MERS and ReconTrust are the same company. Thus, there is no basis for the Sheets' claims under this statute. Accordingly, the Sheets' claims should be dismissed with prejudice.

WHEREFORE, Countrywide Home Loans, Inc., Bank of America, N.A. and BAC Home Loan Servicing, L.P., and ReconTrust Company N.A.'s respectfully request the Court enter an order dismissing the Sheets' counterclaims and entering judgment on their behalf.

DATED this 19<sup>th</sup> day of October, 2012.

BLOOM MURR ACCOMAZZO & SILER, PC

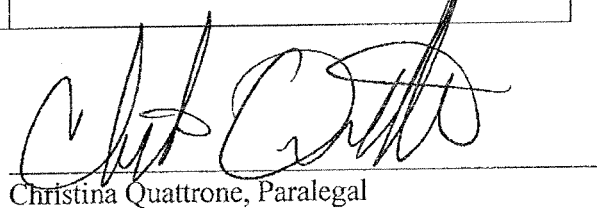
By:

  
Eric R. Coakley, ISB # 9109

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19 day of October, 2012, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

John Curtis Hucks Attorney at Law PO Box 737 New Meadows, ID 83654	<input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Facsimile (208) 347-4128 <input checked="" type="checkbox"/> E-Mail
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Christina Quattrone, Paralegal

JOHN CURTIS HUCKS  
ATTORNEY AT LAW, P.C.  
P.O. Box 737  
New Meadows, ID 83654  
Tel: (208) 347-4128; Facsimile: (208) 347-4128  
huckslaw@yahoo.com  
ISB No. 6473  
Attorney for Defendants/Counterclaimants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA  
SHEETS; and DOES 1-10 as individuals  
with an interest in the property legally  
described as:

Township 22 North, Range 1 East, Boise  
Meridian, Adams County, Idaho  
Section 16: A parcel of land in the  
NE1/4NE1/4 lying Westerly of the Westerly  
line of the right-of-way of U.S. Highway 95,  
as it existed in 1977

EXCEPTING THEREFROM the following  
parcel:

Commencing at a point on the south line of  
the NE1/4NE1/4 as intersected by the West  
line of U.S. Highway 95 (as established in  
1953), the REAL POINT OF BEGINNING;  
Thence Northeasterly along the West line of  
said Highway 550 feet;  
Thence West and parallel to the South line of  
the NE1/4NE1/4 550 feet;  
Thence Southeasterly and parallel to the  
West line of said Highway 550 feet to the  
South line of the NE1/4NE1/4;  
Thence along said South line 550 feet to the

Case No. CV-2010-2564

**DEFENDANTS' RESPONSE TO  
PLAINTIFF'S FIRST SET OF  
INTERROGATORIES, REQUESTS  
FOR PRODUCTION OF  
DOCUMENTS AND REQUESTS FOR  
ADMISSIONS**

164

REAL POINT OF BEGINNING.

Which may commonly be known as: 5603  
Highway 95, New Meadows, Idaho, 83654,

Defendants.

Defendants, Ralph E. Sheets and Debra Sheets, by and through their counsel, John Curtis Hucks, Attorney at Law, P.C., hereby respond to the following written discovery requests:

DEFINITIONS

The following definitions shall apply these written discovery requests:

1. "You" and "Your" refers to the defendant, Ralph E. Sheets.
2. "Address" means the street address, including the city, state, and zip code.
3. "Communication" means any oral or written utterance, notation, or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons.
4. "Counterclaims" means the Counterclaims on file in this case, *Countrywide Home Loans, Inc. v. Ralph Sheets and Debra Sheets*, in the District Court of the Third Judicial District of the State of Idaho, Adams Count, Case No. CV-2010-2564
5. "Document" means any physical thing containing information or from which information can be discerned. Such information may include, any accounting entry, affidavit, agreement, appraisal, bid, bill, book, book of account, cable, calendar, chart, check, computer file, contract, correspondence (sent or received), data file, data sheet or data processing card, deed, deposition, diagram, diary, draft, drawing, electronic mail (e-mail), financial statement, graph, handwritten note, index, instrument, invoice, laboratory record, lease, ledger, list, memorandum (including any memorandum or report of a meeting or conversation), microfilm, note, notes of conversations (typed or hand written), order form, outline, partnership agreement, pamphlet, paper, periodical, photograph, print, receipt, record, recording (whether or not transcribed), report, sketch, statement, study, tape, telex, telegram, transcript, visual depiction, voucher, working paper, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, which is in your possession, custody, or control or which was, but is not longer, in your possession, custody, or control.
6. "Identify" as used herein with respect to a document or communication shall be read to require a statement of all of the following information relative to such document or

communication: (a) title, (b) nature and subject matter, (c) date, (d) author, (e) addressee, (f) file number or other identifying mark or code, (g) location by room, building, address, city, and state, (h) identification of custodian.

7. "Identify" as used herein with respect to any individual shall be read to require a statement of all of the following information relative to such individual: (a) name, (b) present home address, and (c) present home, business, and cellular telephone numbers.

8. "Possession, custody, or control" includes the joint or several possession, custody, or control of You, or Your agents, attorneys, accountants, employees, independent contractors, insurance companies, investigators, representatives, and anyone else acting or purporting to act on their behalf.

9. "Property" as used herein refers to that property referred to in the Counterclaims and located at 5603 Highway 95, New Meadows, Idaho, 83654.

10. "Countrywide" refers to defendant, Countrywide Home Loans, Inc.

11. "Loan" refers to the mortgage loan secured by a deed of trust on the Property and as described in your Counterclaim.

12. "Loan Application" refers to your application with Bank of America to refinance a mortgage on the Property as described in your Counterclaim.

### INTERROGATORIES

**INTERROGATORY NO. 1:** Identify each person who prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify anyone who simply typed or reproduced the responses.)

Ralph E. Sheets

Debra A. Sheets

John Curtis Hucks, Attorney at Law

**INTERROGATORY NO. 2:** Identify your present employer or place of self-employment and each employer or self employment you have had from the five years before the events described in the Counterclaim until today.

Ralph Sheets- Propane Transport International, Amerigas, Inc.

Debra Sheets - housewife

**INTERROGATORY NO. 3:** Identify each school or other academic or vocational institution you have attended beginning with high school. For each, please state the name and address, the dates you attended, the highest grade level completed, and any degrees, diplomas, certificates or the like received.

Ralph Sheets - Dallas Center Community High School, Dallas Center, Iowa  
Graduated 1972

US Army 1973-1976

Iowa National Guard 1976 - 1978  
Non Commissioned Officer School 1976

Des Moines Area Community College 1983 - 1986  
Ankeny, Iowa AAS Computer Programming  
AA Liberal Arts

Des Moines Area Community College 1987  
Ankeny, Iowa Nationally Certified EMT A, D, B  
Nationally Certified 13 years

Iowa State University 1988  
Ames, Iowa Firefighter 1 State Certified

Debra Sheets- Adel Community High School, Adel, Iowa Graduated 1973

**INTERROGATORY NO. 4:** Is your response to each Request for Admission served with these Interrogatories an unqualified admission? If not, for each response that is not an unqualified admission, please state the number of the request, all facts upon which you base your response, Identify all persons with knowledge of those facts, and Identify all Documents or other tangible things that support your response.

SEE RESPONSES TO REQUESTS FOR ADMISSIONS DATED 5/18/2011.

**INTERROGATORY NO. 5:** Please describe all facts that support your claim for breach of contract. This requires you to identify the contract (and if not written, all facts establishing a contract was entered into), the manner of the alleged breach, and any damages you suffered.

On 4/28/2009 Ralph Sheets telephonically submitted a refinancing loan application and paid the \$400.00 loan application fee. That lengthy conversation was allegedly tape recorded by the Countrywide/Bank of America loan representative. Mr. Sheets subsequently submitted



all required underwriting documents requested by the bank. Based on credit and history with Countrywide/Bank of America the loan was subsequently approved with the closing set towards the end of June 2009. This was a standard refinance loan application and not a loan modification. At the time of the application and at all times thereafter, the existing Countrywide loan was fully current. All documents requested by Countrywide/Bank of America were promptly submitted and an appraisal was scheduled and completed in May of 2009.

Due to the many delays by Countrywide/Bank of America, in late August 2009 Sheets was notified that the documentation previously submitted was no longer valid and would have to be resubmitted. Sheets then reauthorized a credit check/employment verification. Sheets were also informed that the appraisal would have to be redone. This was redone in early September 2009. Sheets were promised at least a ½ % discount for their extra efforts. This lengthy phone call was allegedly tape recorded by Bank of America. A new closing date was set by Countrywide/Bank of America on 10/27/2009.

On October 27, 2009 the closing agent designated by Countrywide/Bank of America to meet Sheets in Grangeville for signing loan document signing met with Sheets and would not allow Sheets to see or sign closing papers. The closing agent advised Sheets that there was a problem with the documents. The closing agent stated that Countrywide/Bank of America "did not perform".

A copy of the alleged closing documents were sent via Federal Express to Sheets home and received on October 27, 2009, after the meeting with the Countrywide/Bank of America closing agent. Those documents did not have the correct information that the loan officer Paul Campbell and Sheets had agreed to. Subsequent to the failed closing, numerous attempts were made by Sheets to contact the loan officer at Countrywide/Bank of America to discover what had happened and why. To date the failed closing has not been addressed or explained by Countrywide/Bank of America nor has the bank to completed/rescheduled this closing.

Sheets fully performed their obligations under the refinancing application, and said application was approved by the bank. It was breach of contract for the bank to fail to close the approved loan.

**INTERROGATORY NO. 6:** Identify and describe each and every telephone conversation with representatives of Countrywide and/or Bank of America. In doing so, please state the identity of the person you were speaking to, the date and time of the telephone conversation, and the subject matter of the conversation.

**OBJECTION AS OVERLY BROAD AND UNDULY BURDENSOME.** During the course of this dispute, Sheets has had telephone conversations with a number of representatives of Countrywide/Bank of America. A list of telephone calls between Sheets and Paul Campbell is attached.

**INTERROGATORY NO. 7:** Identify and describe each and every representation you contend was made to you by a representative of Countrywide and/or Bank of America which forms the basis of your claim for fraud in the inducement. In doing so, please state the identity of the person making the representation, the manner or medium in which the representation was made (eg. telephone conversation, written correspondence, etc.), the date and time of the representation, and the content of the representation.

At the point of application by telephone the loan officer, Paul Campbell verified the existing mortgage, payment history and title of the manufactured home. He wanted to lock in the rate at application so he could only use the existing appraisal value which was from 2004 and on file. The 80% of \$110,000.00 was the number to begin the loan process. When the appraisal was completed in May of 2009, Paul Campbell verbally changed the loan amount to \$108,000.00 because that would have been 80% of the \$135,000.00 appraisal value. Paul Campbell numerous times reassured me that the \$108,000.00 was on all the paperwork, in his files, and would be clearly on the allegedly tape recorded conversations.

The approval of the refinance loan was clearly stated that there would be no escrow account set up to pay future insurance and taxes. To our shock the closing papers received at our house late on 10/27/2009 required an escrow account.

On August 28, 2009 Paul Campbell called and stated our personal documentation was no longer valid and that paperwork (i.e. credit reports, etc) must be redone. Approval was given for this. In return for agreement to redo these Sheets was promised at least a 1/2 % discount. On 10/23/2009 Paul Campbell called and stated that the loan could only be 65% of the appraised value due to the fact that it was a manufactured home. Paul Campbell stated a mistake had happened at Bank of America and the loan could only be 65% of the appraisal not the 80% that the loan was approved for.

We initially received verbal commitment by telephone from the BofA loan officer that the loan was approved and would close in late June of 2009. This did not happen because of Countrywide/Bank of America delays, which to this day remain unexplained.

The loan officer knew the purpose of the refinance and at one time stated to go ahead and get our passports to be ready to take our planned trip as soon as the closing could occur, which we did. We incurred this cost and have not been able to use our passports or to take our planned trip to Israel.

The loan officer knew that part of the funds from this refinance was to be used for a remodeling project and that I was going to do most of the labor during the summer months and the summer months were slipping away. Paul Campbell reassured Sheets over and over that the loan was approved and that it was only a matter of getting the proper paperwork completed. He advised that we could go ahead and start the remodeling

work which we did. By the loan officer, Paul Campbell's word, Sheets went ahead and bought the materials. We were then forced to hire a contractor in the fall of 2009 to complete the roof to enclose the addition for winter as the loan had not yet closed and Sheets summer time available was cut short. The loan officer, Paul Campbell, kept reassuring Sheets it was going to close at any time and the delays were caused by Countrywide/Bank of America processing.

**INTERROGATORY NO. 8:** Identify and describe each and every instance in which you contend either Countrywide or Bank of America erroneously reported credit information about you. In doing so, please identify the credit reporting agency, the content of the false report, and identify any Documents demonstrating the erroneous reporting.

Copies of all credit reports in our possession are attached are attached. The credit reporting agencies are Equifax, Trans Union, and Experian. Trans Union and Experian continue to show as of 5/16/2011 that we are 120 days late on the loan. Trans Union and Experian credit reports both show account disputed by Consumer and Experian states "meets requirement of the Fair Credit Reporting Act". The credit scores have only increased because we have continued to make all other payments on time and reduced the balances on the accounts.

Our previous attorney J.D. Hallin and the Bank of America advocate Mona Lovario put this in dispute for us on our credit reports in February of 2010. Our attorney, John Hucks, has an evidence of an email agreement between our previous attorney J.D. Hallin and Mona Lovario that payments would not need to be made until this situation was resolved. However, Bank of America has continued to report late payments even after they were aware of this dispute.

Defendants do not have specific information as to every credit entry filed by Plaintiff, but Plaintiff is or should be in possession of such information.

**INTERROGATORY NO. 9:** Identify and describe each and every dispute you filed with a credit reporting agency regarding the erroneous reporting described in your answer to Interrogatory No. 8.

Defendants notified Countrywide/Bank of America directly with regard to the improper and incorrect entries on their credit accounts. Representatives of Plaintiff expressly advised Defendants that such matters were being corrected, but failed to correct such entries. See answer to Interrogatory No. 8 above.

**INTERROGATORY NO. 10:** Identify and describe each and every action you contend violated the Idaho Consumer Protection Act ("CPA"). In doing so, Identify the individual(s) engaged in the action, the action, the manner in which you contend the CPA was violated, and the specific provision(s) of the CPA violated.

See answer to Interrogatories 8 and 9 above, and documents attached and incorporated into these responses.

**INTERROGATORY NO. 11:** Identify each and every disclosure which you contend violated the Federal Truth in Lending Act ("TILA"). In doing so, specifically identify the disclosure, describe the manner in which you contend the TILA disclosure was inaccurate or erroneous, including any calculations demonstrating the disclosure was erroneous, and identify the specific subsection of TILA or Regulation Z that you contend the disclosure violated.

N/A - This count has been dismissed by Court.

**INTERROGATORY NO. 12:** Identify each and every action which you contend violated the Federal Fair Debt Collection Practices Act ("FDCPA"). In doing so, please identify all facts on which you base your contention that the purported violator was a "debt collector" as defined by the FDCPA, identify the specific action(s) which you contend violated the FDCPA, and identify the specific subsection of the FDCPA which you contend that action violated.

On November 9, 2009, Plaintiff unilaterally reconveyed the Deed of Trust for the 2005 mortgage loan between Plaintiff and Defendants. Thereafter, Plaintiff improperly listed two separate mortgage loans as being in force and effect. Despite repeated attempts by Defendants to resolve the dispute with Plaintiff, Plaintiff has continued to act as if the 2005 loan which is the subject of Plaintiff's Complaint is still in effect, by making erroneous reports to credit reporting agencies and by sending correspondence to Defendants threatening to initiate foreclosure proceedings on a loan that no longer exists of record. Plaintiff has also advised Defendants in writing that the promissory note that was allegedly canceled at the time of the reconveyance is no longer owned by Plaintiff. All of these allegations are directly supported by the documents attached or included with these responses. They are also directly supported by the documentation previously provided by Plaintiff via discovery.

**INTERROGATORY NO. 13:** Identify each and every action which you contend violated the Federal Fair Credit Reporting Act ("FCRA"). In doing so, please describe the action as well as the specific subsection of the FCRA which you contend that action violated.

See response to Interrogatory No. 8 and the documentation attached to or included with these responses.

**INTERROGATORY NO. 14:** Identify each and every instance in which you contend Countrywide or Bank of America slandered your credit. In doing so, describe with particularity all facts constituting a slanderous statement and describe any damages you incurred as a result.

See response to Interrogatory No. 8 and the documentation attached to or included with these responses.

**INTERROGATORY NO. 15:** Identify and describe each and every negative item appearing on your credit report which could have a potential effect on your credit score.

See response to Interrogatory No. 8 and the documentation attached to or included with these responses.

**INTERROGATORY NO. 16:** For each claim for relief alleged in your counterclaims, specifically describe any and all damages you seek. In doing so, identify the facts establishing such damages, provide a calculation and explanation as to how you calculated those damages.

Defendants have lost the benefit of the 2009 loan which was approved by not closed by Plaintiff.

Defendants have been unable to pay off an existing junior mortgage loan with America First Credit Union, which was to be satisfied with funds from the approved 2009 loan.

Plaintiff's erroneous credit reports have caused Defendants' credit card interest rates to markedly increase, resulting in increased interest payments.

Plaintiff's erroneous credit reports have damaged Plaintiff's credit rating.

Due to the failure of Plaintiff to close the approved 2009 loan, Defendants have been unable to fully utilize the equity in their home.

Due to the lis pendens filed by Plaintiff and the continued failure of Plaintiff to negotiate in good faith to resolve the pending dispute, Defendants have been unable to refinance their existing loans with another lender.

Due to the lis pendens filed by Plaintiff and the continued failure of Plaintiff to negotiate in good faith to resolve the pending dispute, Defendants have been unable to obtain a replacement home equity loan on their property.

Defendant Ralph Sheets is employed as a propane transport driver. Because this occupation involves the transport of hazardous and explosive materials, he is required to maintain a security clearance through the Homeland Security Administration. The erroneous credit reports submitted by Plaintiff potentially place that security clearance in jeopardy.

Defendants have been forced to incur substantial attorney fees defending themselves in the present action.

**INTERROGATORY NO. 17:** Identify each and every lender from whom you applied for a refinance loan in the last five years. In identifying the lenders, specify the date on

which you submitted a loan application, the date the application was approved or denied and, if the application was denied, the reason the loan application was denied.

Besides the 2009 loan with Plaintiff, which was approved but not closed through the negligence of Plaintiff, Defendants have attempted to obtain a home equity loan through America First Credit Union, which has been denied because of the currently pending lawsuit. Supporting documentation is attached or included with these responses.

Defendants applied for a 0% interest loan on Citibank credit card account in April of 2010. Loan was to make an emergency travel to attend to serious illness/injury of Defendant's mother. Citibank denied the balance transfer because of the comments placed on Defendant's credit report by BofA. It was common to have 0% available to me and then it was not. We were forced to travel using the Citibank card at 19.99% interest. Also note interest rate increase because of credit reporting by Bank of America.

**INTERROGATORY NO. 18:** State all facts which support your contention that Countrywide and/or Bank of America took any action with the intent to deceive you.

From April 2009 the loan officer, Paul Campbell, stated each conversation would be tape recorded and available to protect them as well as me. Throughout the approximately 40 conversations with the BofA loan officer, the tape recordings were always identified in our conversation. To date, BofA has refused to provide the tape recordings or transcripts of the tape recordings. Identifiers were specifically put on those recordings.

We received commitment from the BofA loan officer that the loan was approved and would close in June of 2009. The loan officer stated that the reason the loan wasn't closing on time was beyond his control but it was the fault of Bank of America's underwriting department.

The loan officer was told the purpose of the refinance and at one time stated to go ahead and get our passports to be ready to take our planned trip as soon as the closing could occur, which we did. We have not been able to use those passports yet.

The loan officer was repeatedly told that part of the funds from this refinance was to be used for a remodeling project and that I was going to do most of the labor during the summer months and the summer months were slipping away. Paul Campbell reassured Sheets over and over that the loan was approved and that it was only a matter of getting the proper paperwork completed at Bank of America's underwriting department. Paul Campbell advised that Sheets could go ahead and start the remodeling work which Sheet did.

Sheets were deceived on the amount of the new payment. An escrow had been set up by Bank of America for taxes and insurance. This was done without Sheets knowledge or consent. Loan officer Paul Campbell assured Sheets there would be no escrow accounts required. Bank of America also contacted our personal homeowners insurance company and demanded an escrow

account be set up. Paperwork was submitted to the homeowners insurance company to establish this without the written or verbal consent of Sheets.

BofA deceived us by stating refinancing loan was ready to close on October 27, 2009.

**INTERROGATORY NO. 19:** Identify each and every action you contend you took in reliance on representations made by Countrywide and/or Bank of America. In doing so, specifically describe each representation and the action you took in reliance on it.

Objection. Overly broad and burdensome. See previous answers and documentation attached or included with responses.

**INTERROGATORY NO. 20:** Identify and describe each and every payment you have made on your loan since April of 2009 to the present.

Defendants made all payments due between April 2009 and October 2009. Defendants also attempted to make the payment due in November and December 2009, but said payments were not properly processed by bank. In February 2010, Defendant's prior counsel was advised by Mona Lavario that no further payments were required until dispute was resolved. As of November 9, 2009, there has not been a valid loan of record against which to make payments.

### **REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** Produce any Documents referenced, relied on or used by you in answering the interrogatories.

See documentation attached or included with responses, including electronic documents previously produced by Plaintiff.

**REQUEST FOR PRODUCTION NO. 2:** Produce any and all Documents submitted to or received from Bank of America in connection with the failed refinance of your mortgage, as described in your Counterclaims.

See documentation attached or included with responses, including electronic documents previously produced by Plaintiff.

**REQUEST FOR PRODUCTION NO. 3:** Produce any and all Documents evidencing Communications with Countrywide or Bank of America.

See documentation attached or included with responses, including electronic documents previously produced by Plaintiff.

**REQUEST FOR PRODUCTION NO. 4:** Produce any and all Documents evidencing the erroneous credit reporting as described in your Counterclaims.

See documentation attached or included with responses, including electronic documents previously produced by Plaintiff.

**REQUEST FOR PRODUCTION NO. 5:** Produce a current copy of your credit reports from each credit reporting agency.

See documentation attached or included with responses, including electronic documents previously produced by Plaintiff.

**REQUEST FOR PRODUCTION NO. 6:** Produce any documents which support your claims for or calculation of damages.

See documentation attached or included with responses, including electronic documents previously produced by Plaintiff.

**REQUEST FOR PRODUCTION NO. 7:** Produce all documents which you contend evidence a violation of TILA.

N/A - Count previously dismissed by Court.

**REQUEST FOR PRODUCTION NO. 8:** Produce all documents relating to any applications you have made for a refinance loan within the last five years.

See documentation attached or included with responses, including electronic documents previously produced by Plaintiff. Otherwise Defendants do not have additional documentation.

**REQUEST FOR PRODUCTION NO. 9:** Produce any and all documents relating to either the 2004 loan, or the 2009 failed refinance as described in your Counterclaims.

See documentation attached or included with responses, including electronic documents previously produced by Plaintiff.

**REQUEST FOR PRODUCTION NO. 10:** Provide any and all documentation evidencing payments you have made on your mortgage loan since April of 2009.



See documentation attached or included with responses, including electronic documents previously produced by Plaintiff.

**REQUEST FOR PRODUCTION NO. 11:** Produce any other document which relates to the allegations made in your counterclaims.

See documentation attached or included with responses, including electronic documents previously produced by Plaintiff.

### **REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION NO. 1:** Admit that neither Countrywide nor Bank of America is a debt collector as defined by the FDCPA.

**REQUEST FOR ADMISSION NO. 2:** Admit that neither Countrywide nor Bank of America acted intentionally to deceive you with respect to any of the conduct described in the Counterclaim.

**REQUEST FOR ADMISSION NO. 3:** Admit that the TILA disclosures provided to you were accurate in every material respect.

**REQUEST FOR ADMISSION NO. 4:** Admit that you did not dispute the purported erroneous credit reporting information with any credit reporting agency prior to filing the Counterclaim.

**REQUEST FOR ADMISSION NO. 5:** Admit that you have suffered no damages as a result of the erroneous reporting of credit information by Countrywide or Bank of America.

Requests for Admissions previously responded to.

DATED This 31<sup>st</sup> day of October, 2011.



JOHN CURTIS HUCKS  
ATTORNEY AT LAW, P.C.  
Attorney for Defendants/Counterclaimants

FILED

DEC 18 2012 3:00 P.M.

SHERRY WARD, CLERK

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Attorneys for Countrywide Home Loans, Inc., Bank of America, N.A., BAC Home Loan Servicing, L.P. and ReconTrust Company N.A.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA  
SHEETS; et. al.

Defendants.

Case No. CV-2010-2564

**COUNTRYWIDE HOME LOANS,  
INC.'S MOTION FOR SUMMARY  
JUDGMENT**


COMES NOW Countrywide Home Loans, Inc., n/k/a Bank of America, N.A. ("Countrywide"), by and through its attorney of record, and pursuant to Mont. R. Civ. P. 56 hereby submits its motion for summary judgment on the claims stated in the complaint. As more fully set forth in the brief filed contemporaneously herewith, Countrywide moved the Court for entry of:

1. A declaratory judgment finding that the reconveyance erroneously recorded November 9, 2009 is void.
2. In the alternative, or in addition, Countrywide requests the Court to enter an order voiding the reconveyance to prevent the Sheets from being unjustly enriched.

DATED this 13<sup>th</sup> day of December, 2012.

BLOOM MURR ACCOMAZZO & SILER, PC

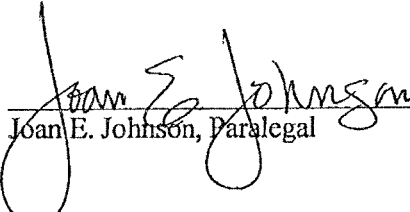
By:

  
Eric R. Coakley, ISB # 9109

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13<sup>th</sup> day of December, 2012, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

John Curtis Hucks Attorney at Law PO Box 737 New Meadows, ID 83654	<input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Facsimile (208) 347-4128 <input checked="" type="checkbox"/> E-Mail
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Joan E. Johnson, Paralegal